**Koronis Parts, Inc. *and* Teamsters Union Local No. 970, affiliated with International Brotherhood of Teamsters.** Cases 18–CA–13787, 18–CA–13848, 18–CA–13884, and 18–CA–13966

October 10, 1997

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On November 21, 1996, Administrative Law Judge William J. Pannier III issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed cross-exceptions with a supporting brief and a brief in opposition to the General Counsel's exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's ruling, findings,[1] and conclusions and to adopt the recommended Order.

[1] In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) by its issuance of disciplinary warnings to leading union proponents William Bertram and Alan Remmel on October 16, 1995, for violation of its ''front-door rule,'' we acknowledge that the rule itself was not shown to be unlawful and, as the judge found, the two employees did actually violate it on that day. The record supports the judge's finding, however, that during the approximately 10 years of the rule's existence, violations had occurred ''regularly'' and had never been subject to disciplinary action; and the reminder posted by the Respondent on September 22 gave no intimation of any change in enforcement policy regarding the rule. That the Respondent issued disciplinary warnings to four other employees either on October 16 or shortly thereafter does not undermine the judge's conclusion that the warnings to Remmel and Bertram were motivated by its animus against their union sentiments. It is not uncommon for an employee to discipline some of its employees in order ''to give credence to its pretextual reasons'' for disciplining other employees whom it has unlawfully targeted. See, e.g., *Fast Food Merchandisers*, 291 NLRB 897, 898 (1988). Since the General Counsel did not include the warnings to the other employees in the complaint, we have no occasion to pass on their legality, but this omission does not disturb our conclusion concerning the motive for the Respondent's disciplinary notices to Bertram and Remmel for exiting by doors other than the front door of the plant.

In adopting the judge's findings regarding discipline for violations of the telephone rule, we rely as to employee Bertram, not only on the judge's factual findings and analysis but also on the difference between the rule as it was stated in the 1991 written policy (G.C. Exh. 3), which was effective on November 6, 1995, when Bertram was disciplined, and the policy as described in the notice issued to Bertram and as amended in a policy published not long after the discipline of Bertram. The 1991 policy prohibited ''personal phone calls . . . *during working hours* without prior arrangement'' (emphasis added). Bertram testified without contradiction that he made the call to Union Vice President Behr on his break, conduct which the policy did not prohibit. The disciplinary warning notice contained no reference to ''working hours,'' and the Respondent shortly thereafter issued a revised policy ''amended November 14, 1995'' (G.C. Exh. 2) that removed the reference to ''working hours'' and included more details so that the rule would clearly prohibit calls such as the one made by Bertram.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law and orders that the Respondent, Koronis Parts, Inc., Paynesville, Minnesota, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*Florence I. Brammer, Esq.*, for the General Counsel.
*Steven C. Miller* and *John P. Haberman, Esqs. (Martin L. Garden)*, of Minneapolis, Minnesota, for the Respondent.

## DECISION

### STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Minneapolis, Minnesota, on April 17 through 19 and on April 22, 1996. On March 18, 1996, the Regional Director for Region 18 of the National Labor Relations Board (the Board) issued an order further consolidating cases, amended and consolidated complaint and notice of hearing—based on unfair labor practice charges filed in Case 18–CA–13787 on October 4, 1995,[1] and amended on October 24 and on February 3, 1996; in Case 18–CA–13848 on November 24, and amended on November 27 and on February 23, 1996; in Case 18–CA–13884 on December 18, and amended on February 23, 1996; and, in Case 18–CA–13966 on March 8, 1996,—alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). All parties have been afforded full opportunity to appear, to introduce evidence,[2] to examine and cross-examine witnesses,

[1] Unless stated otherwise, all dates occurred during 1995.

[2] Appended to Respondent's brief is a Notice of Decision and Right of Appeal issued by an administrative law judge of the Job Service and Reemployment Insurance Division of the State of Minnesota Department of Economic Security on May 30, 1996, after the hearing had closed in the instant case. It pertains to the discharge of William L. Bertram, an action alleged in the amended and consolidated complaint to have violated Sec. 8(a)(3) and (1) of the Act, and concludes that the discharge was for misconduct. Respondent ''moves that the record be reopened for the limited purpose of receiving'' that decision.

The General Counsel opposes reopening the record and receiving the Notice of Decision and Right of Appeal, arguing that it sheds no new light on the motivation for Bertram's discharge, that there is no indication that Bertram's union activities were considered in reaching that decision, and that the General Counsel would be prejudiced by not receiving an ''opportunity to cross-examine witnesses or otherwise rebut the alleged scope and significance of the unemployment decision.''

The two cases cited primarily by the General Counsel in opposing Respondent's motion, however, involve *State Civil or Human Rights and Equal Employment Opportunity Commissions: Foster Electric*, 308 NLRB 1253 fn. 1 (1992), and *Central Broadcast Co.*, 280 NLRB 501 fn. 1 (1986). Such statutes involve different purposes than the Act. In contrast, as to unemployment benefits claims—or, as here, reemployment insurance benefits—the Board has ''long held that such decisions, although not controlling as to the findings of fact or conclusions of law contained therein, have some probative value and are admissible into evidence.'' (Citations omitted.) *Western Publishing Co.*, 263 NLRB 1110 fn. 1 (1982). See also *Volt Information Sciences*, 274 NLRB 3098 fn. 3 (1985). However, that does not conclude consideration of Respondent's motion.

and to file briefs. Based on the entire record, on the briefs which were filed, and on my observation of the demeanor of the witnesses, I make the following

## FINDINGS OF FACT

### I. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. *Introduction*

Koronis Parts, Inc. (Respondent) is a Minnesota corporation, with an office and place of business in Paynesville, Minnesota. In its facilities located there, Respondent manufactures aftermarket replacement snowmobile parts and accessories.[3] It is owned by Edward H. and Kathleen V. Webb, husband and wife. Respondent admits that Edward Webb is a statutory supervisor and its agent. Its operations and sales manager is Bruce Vanderpool. Reporting to him is Robert Cloakey, the plant manager. It admits that, at all material times, Vanderpool and Cloakey, each, had been a statutory supervisor and agent of Respondent.

There is a dispute, however, regarding the supervisory and agency status of Kathryn Lenz, a department head. The General Counsel contends that she had been a statutory supervisor and agent to Respondent at all material times. Respondent disputes those contentions. The issue of her supervisory and agency status is addressed in section II,A, infra.

Webb acknowledged that, during the summer, he had seen a letter from Bertram explaining why the latter thought his wage review had been unfair. In fact, testified Webb, because of that letter he had directed that there be prepared a checklist of machines and equipment which Bertram had become competent to operate.

During early September, some of Respondent's employees contacted Teamsters Union Local No. 970, affiliated with International Brotherhood of Teamsters (the Union).[4] Meetings and an organizing campaign ensued. By letter dated September 7, the Union's vice president, George Behr Jr., notified Edward Webb of the organizing campaign and, further, that Bertram ''is on the Organizing Committee, assisting with the campaign.'' So far as the evidence reveals, this had been Respondent's first knowledge of its employees' contacts with the Union. In a second letter to Webb, dated September 15, Behr identified six additional employees of Respondent ''who will be on the Organizing Committee along with Bill Bertram[.]'' Those employees were Jack Martinson, Peter McCann, Philip Schmitz, Allan Remmel, Shari Keller, and Robert Kessler.[5]

Aside from being named in the Union's correspondence to Respondent, at least some of those employees engaged in other union activities. For example, several newsletters, advocating selection of the Union as the bargaining representative of Respondent's employees, were periodically prepared and distributed to coworkers by Bertram, Kessler, Remmel, press operator Daniel L. Whitcomb,[6] and, on occasion, McCann. Additionally, T-shirts and/or caps bearing union insignia were worn by several employees, including Bertram, Kessler, and Remmel. Indeed, T-shirts seem to most frequently have been worn on Tuesdays. For, the phrase ''T-shirt Tuesday'' was coined with regard to wearing them on that day of the week. As will be seen, both the T-shirt wearing and literature distribution became springboards for certain of the amended and consolidated complaint's allegations.

#### B. *Retention of Tamara Sondrol*

During the summer, Respondent had examined and arranged to purchase from Lincoln Welder a robotic welder that would eliminate a significant amount of manual labor once jigs are built and parts need to be welded. Because there was a 60-day money back guarantee for the robot, and schooling or training in Ohio for an operator was included in the robot's purchase price, Respondent needed to select an operator and commence operating the welder as soon as possible. That posed a problem.

Manager Vanderpool testified that ''we didn't necessarily know who was going to operate it'' and ''our hope was to find somebody that may already know a little bit about

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In *Justak Bros. & Co.*, 253 NLRB 1054 fn. 1 (1981), enfd. 664 F.2d 1074 (7th Cir. 1981), the Board refused to reopen a record to receive a similar decision and its underlying transcript, pointing to the differences in statutory definitions, policies and purposes, as well as to the absence of a showing that the unfair labor practices had been considered in the state proceeding and the Board's administrative law judge's responsibility to render a decision based upon the evidence received in the unfair labor practice proceeding. Still, 4 years' later, the Board did allow a record to be reopened to receive such a decision. *Garrison Valley Center*, 277 NLRB 1422 fn. 1 (1985). There, as here, the state agency's decision was not issued until after the unfair labor practice hearing had concluded. Unlike the instant case, however, the General Counsel in *Garrison Valley* had agreed that the state decision should be made part of the record. More importantly, the parties must have discussed during the hearing the possibility of receiving a subsequently issued decision by the state agency. For, the Board pointed to ''the judge's explicit direction to the parties to forward to him any final decision on Brown's claim[.]''

Without belaboring the matter further, I deny Respondent's motion to reopen the record and to receive the Notice of Decision and Right of Appeal. For the reasons set forth in sec. II,I, infra, I am concluding that a preponderance of the credible evidence fails to establish that Bertram's discharge had been unlawfully motivated under the Act. That conclusion is based on the evidence presented during the hearing in the instant case. Even if the state determination were received, it would not be controlling and, in any event, would add nothing to the conclusion which I am reaching under the Act concerning Bertram's discharge.

[3] Respondent admits that, at all material times, it has been an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act, based on the admitted facts that during calendar year 1995, it purchased goods and supplies valued in excess of $50,000 which it received directly from suppliers located outside of the State of Minnesota.

[4] At all material times, it is undisputed, the Union had been a labor organization within the meaning of Sec. 2(5) of the Act.

[5] The letter misspells Kessler's name ''Kesoler.'' Still, there is no basis in the record for concluding that Respondent would not have understood, despite the misspelling, the identity of the employee to whom the letter was referring. There is no evidence that, during September, Respondent had employed anyone with the surname ''Kesoler.'' Nor is there evidence that, during that month, it employed anyone, other than Kessler, whose surname was spelled even closely to ''Kesoler,'' much less someone with a similar surname whose first name also had been Robert. Indeed, no official of Respondent, particularly Edward Webb, claimed that the letter's use of the surname ''Kesoler'' had led him or her to conclude that someone other than Robert Kessler had been intended by the Union.

[6] Not to be confused with Donovan Whitcomb, Respondent's machine shop manager or leadman.

robotic training'' so that ''we would have a better chance of having jigs built before they went to school to learn how to . . . program the thing'' to ''keep the torch head at arc'' so that the various metal parts could be welded. But, ''we didn't have that person,'' testified Vanderpool.

As a result, Vanderpool testified, he contacted The Work Connection, a temporary employment placement agency located in St. Cloud, Minnesota. ''I dealt with Terri'' Karolus, he testified, who was at that time a staffing coordinator with The Work Connection. Vanderpool explained to her that ''we were on a relatively tight time frame, but we were looking for somebody that had welding ability, that knew what a good weld looked like and somebody preferably that had robotic experience but if we couldn't find that person, somebody that could recognize a good weld would probably work for us.'' Of equal import, given the facts as they unfolded in the instant case, Vanderpool testified that ''we were looking for a long-term individual. Our investment in the training was quite a bit and so [we] didn't necessarily want somebody to come and go to the training and then leave the plant.'' Karolus confirmed that testimony: ''They were looking for somebody that was willing to give [a] long term commitment and eventually move this person into a robotics area of the company.''

Karolus supplied to Vanderpool resumes of a few people, one of whom was Tamara Sondrol. She had participated in 2 years of industrial welding schooling. Robotic welding had been included among her courses. Vanderpool testified that when he expressed interest in Sondrol, Karolus mentioned that Sondrol had earned ''somewhere around $10.00 an hour'' at her previous job. In response to that, testified Vanderpool, ''I said, well we are in a position where we are developing this, I don't know necessarily that we will be paying $10.00 an hour to somebody where we don't know for sure that all of their experience is exactly what we want.'' Still, Vanderpool arranged for an interview with Sondrol.

During the middle of the workweek of September 11 to 15—the week following the Union's first letter to Webb—Sondrol was interviewed, and escorted on a tour of Respondent's Paynesville welding areas, by Vanderpool and Plant Manager Cloakey. During the interview, ''I told her that I had talked to Terri at [T]he Work Connection and that we were kind of thinking of somebody from—in the $8.00 range,'' Vanderpool testified. That testimony is significant because there is an allegation that, on or about September 15, Vanderpool ''instructed an employee to not discuss wages with other employees.''

As to that allegation, Sondrol testified that, during the tour, she had waved to a welding department employee whom she recognized and that Vanderpool had commented, ''Oh, you know Ron,'' to which she replied in the affirmative. According to Sondrol, Vanderpool then said, ''It's really important that you don't talk about wages to any of the employees,'' and Cloakey repeated that admonition: ''It is really important not to [t]alk about wages.'' Sondrol testified that she responded that she ''understood.''

Cloakey gave no testimony regarding the above-described admonitions to Sondrol. Vanderpool agreed that he had mentioned to Sondrol the subject of discussing her wages with Respondent's employees. He claimed, ''I can't tell you exactly where it was, and what time I talked with her,'' but he acknowledged having said to her, ''that we were going to pay [T]he Work Connection a larger dollar amount and what she received was basically finalized by them and I'd rather at this point if she didn't talk about [it] with others.'' Indeed, the General Counsel appeared not to dispute that $8 an hour was higher than the typical base pay for a welder starting employment with Respondent.

The Work Connection was given notice that same week that Sondrol's service would be retained, with the understanding that Respondent would be hiring her if she worked out during an approximately 1-month trial period. She started welding at Respondent on Monday, September 18. She was carried as an employee of The Work Connection during the time that she worked at Respondent through Friday, October 6. Nevertheless, the General Counsel alleges that, during that period, Respondent and The Work Connection had been joint employers of Sondrol.

### C. *September Disciplinary Reports Issued to, and Job Transfer of, William Bertram*

One or two days after Sondrol commenced working at Paynesville, two other events occurred. They involved Bertram, the employee first identified to Respondent by the Union as being on the latter's organizing committee. He had begun working for Respondent on June 20, 1994, in the wear bar department where he operated the induction welding machine. During early 1995, he was transferred to the machine shop. There, he worked primarily in the resleeving department, but also worked elsewhere in the machine shop whenever a need arose. He continued doing so until Wednesday, September 20.

Bertram received an employee disciplinary report signed by Cloakey on ''9–20–95,'' and listing ''9–19'' as ''Date of Incident.'' Checked on it, as ''Nature of Incident,'' are ''Failure to follow instructions,'' ''Substandard work,'' ''Carelessness,'' and ''Defective and improper work.'' In the ''Supervisor's Remarks'' section is handprinted:

> BILL HAS RUINED TWO CYLINDERS IN THE LAST 3 DAYS BY NOT PAYING ATTENTION TO WHAT HE IS DOING. WE HAVE TOLERATED THIS PROBLEM LONG ENOUGH, HE HAS HAD A PROBLEM WITH QUALITY FOR AWHILE. I HAVE DONE EVERYTHING POSSIBLE TO TRAIN BILL TO DO THIS JOB, BUT THE LACK OF QUALITY AND THE INABILITY TO MEASURE HAS MADE THIS EMPLOYEE UNABLE TO DO HIS WORK CORRECTLY. BY MEASUREMENTS WE MEAN BY USING THE MACHINERY AND ENDING UP WITH PROPER TOLERANCES.

The General Counsel alleges that this disciplinary report had been issued in retaliation for Bertram's recently disclosed union support and activities.

The disciplinary report was given to Bertram by Cloakey during a meeting on September 20. As will be seen in section II,F, infra, the basis for it was incorrect measurements made by Bertram when resleeving cylinders.

During that same meeting, Bertram was informed that he was being transferred back to the wear bar department. The General Counsel alleges that this action also had been motivated by hostility toward Bertram's recently revealed support for the Union. However, it is undisputed that he suffered no reduction in pay as a result of the transfer. Moreover, Ber-

tram declined an offer to be transferred instead to the fiberglass plant. As to the latter, he testified, ''I worked in there once before in cleaning and that fiberglass bothered me a lot.''

As to Respondent's reason for having transferred Bertram from the machine shop, Vanderpool testified that he ''had thought . . . for a fair amount of time'' about closing the resleeving operation, but had not had enough time to think it through until ''we were right back into'' the fall when

> people want to get sledding, they don't want their sled down, they don't know when the snow is going to come, so even though a project could have been three or four weeks, they wanted it the next day, even if there is no snow, but—because if it snows the next day, they have to have it, and—there was a fellow downtown that did a real good job of sleeving, he has many times if somebody had a technical issue about an engine or something, they'd reference this fellow, so he carried quite a bit of prestige with him and I went down and I asked him[.]

According to Vanderpool, he had worked on price with that ''fellow'' and, then, had approached Webb, saying:

> ''Ed, I'd really like to have somebody else do the sleeving so we get the products out to the customer at a rapid rate but I've got to be honest with you, I don't think we are going to make a lot of money on it. We'll make a nominal amount.'' I said, ''I almost have to write this one off and it's a customer service client that—if we're going to take care of the customers, they have to have it, whether we have problems or not, they don't give a rip, they want their product and they want it finished.''

Although Webb ''didn't like the idea very well,'' Vanderpool testified that he ultimately was ''able to convince him, if it's based on customer service, often I can convince him that we need to make a change that way.'' As to why he had ostensibly concluded that Bertram would not be able to continue resleeving in the machine shop, Vanderpool explained, ''Because I felt that he couldn't measure and if you can't measure, you can't machine.''

In light of certain October-based allegations, it also should be noted that included with employees' paychecks and posted on September 22 was a notice to all employees. It stated:

> On August 16, 1991 Koronis Parts, Inc. issued the following; [sic]
>
> All employees will enter and exit through the front door when coming to or leaving work. This includes lunch and break periods.
>
> On July 31, 1993 Koronis Parts, Inc. reminded all employees of this policy with the following notice; [sic]
>
> When coming to and from work, use the front door . . . no exceptions.
>
> With the many phone calls and visitors we receive, this is very important when trying to locate employees.

There is no allegation that, of itself, posting and distribution of that notice had been unlawfully motivated or otherwise violated the Act. But, as discussed in subsection I, infra, when disciplinary reports were issued to Bertram and Remmel on October 16, for having used doors other than the front one, the complaint alleges that Respondent violated the Act.

Bertram returned to the wear bar department following the above-described meeting. There, he resumed operating the induction welding machine, as he had done prior to having been transferred to the machine shop. On September 27, a written document was handed to him by Lenz. That document recites:

> Warning to Bill Bertram for performing a known task to less than standard and less than he previously [has] shown us that he could do.
>
> After a few days on the induction machine the standards are not being met. We anticipated at least 100%. Kathy indicated to Bill that it was most important to make good parts and the standards were secondary. We looked back in our records and found that Bill excelled on the standards last winter and no defective bars. We can't find any reason that he is not doing at least as well as last winter. We do realize that he may need a day or so to reacquaint himself to the process. Also, we had another person work on it for 3 weeks and she did more per hour than Bill is doing now. This is a warning to Bill that we expect at least 100% of standard on the induction machine. If his standards stay low we will take necessary action. If he has questions or thinks that this is not reasonable we will put someone else on it and prove to him that he is far below standard. We also expect quality bars. The induction process is very simple and very controlled so we should have no defectives. We have moved Bill to this area after poor quality warnings were given at his previous job. Company policy provides for us to take action when problems like this occur.

The document had not been signed or dated when handed to Bertram by Lenz. At his request, she signed and dated it. As with the prior two September personnel actions involving Bertram—the disciplinary report and the transfer—the General Counsel alleges that his ''Warning'' also had been motivated by considerations unlawful under the Act.

Lenz testified that she merely had been ''given this document to give to Bill.'' Asked who had given it to her, she responded, ''I believe Bob Cloakey did.'' Yet, Cloakey never acknowledged that he had done so and, further, gave no testimony whatsoever in connection with this ''Warning to Bill Bertram[.]'' Instead, Vanderpool provided the explanation for its preparation and issuance to Bertram:

> Well, he moved back onto the department and I was looking at the standards and all of a sudden my curiosity, see how he was doing, it seemed like the standards were like 67, 74 percent which I felt that he could do better at and so I wrote this up and I said, ''Give this to Bill, I know he can do better than that.'' He basically had set the standard [when he had worked previously on the induction machine] and I talked to Bob a little bit about it, so put it together and gave it to Bill.

To support that testimony, Respondent produced production analysis records showing that from September 20 through 26 Bertram's production had varied from 61 to 78 percent of standard. Bertram acknowledged that, when Lenz had given him the warning, ''I told her that I had needed a few days to get back into the groove of things to know how to do things again and find all the tricks and trades and everything and get my production up[.]'' In short, Bertram conceded that his production through September 26 had been below standard. In contrast, from September 27 through 29—after having received the ''Warning''—his production rose to between 94 and 101 percent of standard.

### D. *September Bonuses and Gift and Prize Awards*

On September 27, Respondent had a picnic for its employees. That was not a particularly unusual event. It is undisputed that Respondent sponsored functions, at which food was served to its employees, quite a few times in the past. In fact, the General Counsel does not allege that conducting the September 27 picnic, of itself, had violated the Act. Still, the complaint does allege that ''Respondent awarded a $1,000 bonus to each employee with more than ten years of service, and gave other employees gift certificates, in order to discourage employee support for the Union.''

During the picnic, in fact, Respondent did award 10-year service plaques to six employees and $1000 bonuses to three of them. As discussed further in section II,C, infra, however, it presented evidence that those plaques and bonuses had been planned several weeks before the organizing campaign had been revealed by Behr's September 7 letter.

Less evidence was presented concerning the gift certificates and monetary prizes awarded as a result of drawings conducted during the picnic. There is no dispute that such drawings did occur. Edward Webb testified that at previous company functions, such as at Christmas and New Year, and at lunchtimes, similar drawings had been conducted. Yet, whereas the September 27 prizes ''varied from $5 to $20'' and the majority of that the gift certificates ''were in the $10 area,'' Webb testified that prizes or awards at previous drawings had been ''[j]ust little stuff,'' such as ''$5 gift certificates to Subway. Stuff like that.'' He did not explain the reason(s) for the higher value prizes and certificates awarded on September 27.

### E. *Request for Restriction on Distribution of Union Literature and Issuance of Employee Disciplinary Report to Kessler on October 3*

One final event may have occurred during September, or may not have occurred until early October. In either event, the General Counsel alleges that Cloakey unlawfully had ''instructed an employee to not hand out Union literature during breaks.'' As stated in subsection A, above, Kessler had been one employee who had distributed literature on behalf of the Union. Some had been distributed during breaks. Cloakey testified that when literature had been distributed during breaks, rather than returning to work afterward, employees ''were standing around talking about the literature and everything[,] so I went to Bob [Kessler] and I asked him if it would be possible that we could compromise and do this after work, meaning him distributing his literature and us distributing our literature, meaning the company.'' According to Cloakey, Kessler ''wondered if he would be able to leave a minute or two early to get to the front door to pass out the literature and I said[,] 'Whatever you have to do, Bob, go ahead and do,''' with the result that Kessler was allowed to leave early and was paid for such early departures from work.

No evidence was presented to challenge Cloakey's description of employees having discussed literature distributed during breaks, rather than returning to work. Kessler admitted that Cloakey had done no more than ask for an agreement concerning the time of literature distribution. He also acknowledged that, in doing so, Cloakey had said that he could not force Kessler to do anything.

According to Kessler, he had been summoned by Cloakey to the latter's office where Cloakey had ''asked . . . if we could try to pass [Union literature] out after work instead of during breaks because it disrupted people after break. They would be looking at it or whatever,'' and Kessler promised to confer with Bertram and Remmel to ascertain if they would agree to such an arrangement. Kessler did not testify to any other remarks during that conversation. As will be explained in subsection O below, the proposed arrangement did not work out and resumption of breaktime literature distribution led to another alleged violation of the Act.

On October 3 Kessler received from Edward Webb an employee disciplinary report for ''Improper Conduct.'' On it, Webb had written, under ''Supervisor's Remarks'':

> I HAVE INFORMATION THAT YOU HAVE MADE STATEMENTS TO ONE OF MY VENDORS THAT ARE UNTRUE. THESE WERE STATEMENTS SUCH AS ''THE COMPANY MADE 3-1/2 MILLION LAST YEAR'' AND ''HE'S HIDING MONEY.'' I CONSIDER THESE STATEMENTS DEFAMATORY AND THEY MUST CEASE NOW. CONTINUED DEFAMATORY STATEMENTS SUCH AS THESE WILL RESULT IN FUTURE DISCIPLINE.

There is no dispute about the sequence of events which led to preparation and issuance of that disciplinary report, though the General Counsel alleges that those events warrant the conclusion that it had been unlawfully issued to Kessler.

To repair the SL3 turning center, Bart Kuney, owner of a repair business, had come to Respondent's Paynesville place of business. Whenever he had come there, Kuney and Kessler would lunch together. They did so on October 2. During the course of that lunch, they discussed the union activities then in progress at Respondent. Kessler mentioned that, at one of the Union's meetings, employees had been told that Webb ''was hiding money and when I got back [to work] I got a warning letter the next day'' from Webb.

As to that latter subject, Kessler testified that he had been called to Webb's office where he had been issued the above-mentioned disciplinary report. In the accompanying conversation, testified Kessler, Webb ''said that I had used poor judgment I think was how he said it, and it was a derogatory thing towards the company that I said these things to Bart.'' Kessler testified that he had replied, ''I thought it was okay that I said these things. I was off company property on my own time, but I did think . . . I probably could have used better judgment in what I said to Bart.''

Webb testified that he had known Kuney for approximately 15 years and that, on October 2, Kuney had asked to

speak with Webb. During their ensuing conversation, according to Webb, Kuney said that Kessler ''had told him that I was hiding money and that I had made $3-1/2 million last year and he said that it concerned him as a vendor and a friend'' that someone would be saying such things.

When he met with Kessler, Webb testified that he repeated what had been reported by Kuney and Kessler admitted having said as much to Kuney, though ''he said that the [U]nion said it[.]'' Webb responded, ''[T]that the end result is the same and I would prefer if you're not sure on the facts that you don't spread rumors to my vendors. He agreed that that wasn't in good taste, and he also agreed that he wouldn't do it. I said that I had to give him a warning for that.'' But, Webb never explained why he had felt it necessary to issue a disciplinary report to an employee who had promised that he would not repeat such conduct. Nor, for that matter, did Webb explain why, on that disciplinary report, he had backdated the ''Date of Incident'' to ''9–22–95.''

### F. *T-Shirt Incidents*

As described in subsection A, above, union T-shirts were being worn by some employees, particularly on Tuesdays. Webb testified that ''a number of employees came to me and said, can we get shirts that say, vote no, and I said that shouldn't be a problem'' Webb never identified any of the employees who purportedly made that request. Nor did any employee appear as a witness to corroborate his testimony about that asserted request by ''a number of employees,'' though employees and former employees were called by Respondent to corroborate other aspects of Edward Webb's testimony.

Respondent did obtain ''VOTE NO'' T-shirts and they were offered to employees by, at least, Vanderpool. For example, Sondrol testified that as she returned from lunch one Tuesday, Vanderpool had been standing by the front door—through which employees were supposed to enter and exit the building, as described in subsection C, above—and he asked if anyone wanted one of the ''bunch of T-shirts'' he had. It is not disputed that Sondrol asked, ''We don't have to wear it if we take one, do we?'' When Vanderpool merely smiled in response, Sondrol took one, saying, ''I'll take a free T-shirt.'' But, so far as the evidence shows, she never wore it at work.

Similarly, it is uncontested that when Bertram walked in the front door, wearing a blue union T-shirt, and encountered Vanderpool handing out Respondent's T-shirts, Bertram asked if he could have one. Vanderpool replied in the affirmative and, as he handed one to Bertram, remarked, ''Now you can get rid of the blue one.'' That remark is not alleged as an independent violation of the Act. However, the amended and consolidated complaint does allege that Respondent interfered with, restrained, and coerced employees in the exercise of statutory rights by the act of having ''distributed 'VOTE NO' T-shirts to employees.'' Further, it is alleged that Respondent also violated the Act when Webb threatened that if an ''employee was not going to wear the T-shirt at Respondent's Paynesville . . . facility, the T-shirt had to be returned.''

That employee had been Bertram. After receiving a T-shirt from Vanderpool, Bertram returned to work, remarking to a coworker ''that I should turn it inside out and wear it in the barn.''[7] Bertram did not identify the individual to whom he had made that statement. Yet, it is clear that he had made such a statement. For, Webb testified that it was reported to him that Bertram ''had told someone in the plant that . . . he was not going to wear the shirt at work but he was going to take the shirt home and wear it in the barn with the pigs.'' Webb did not identify the individual who had made that report. Nor did either side call as a witness the individual to whom Bertram had spoken and, presumably, who had made the report to Webb.

Webb testified that he felt what Bertram had said, ''was improper'' and, consequently, ''the next day or so I went and talked to Bill and asked him if he wasn't going to wear the shirt at the plant if he would please return the shirt,'' pointing out that it cost $15. Bertram agreed that, during this conversation, Webb had ''said the T-shirt costed [sic] about $15 and that if I wasn't going to wear it at the shop that I should bring it back and that the comment I made was a rude comment, and I apologized for the comment.'' Interestingly, when the subject was pursued with Webb during cross-examination, Webb embellished his account, testifying that Bertram had ''told other employees''—not just the ''someone'' whom Webb had mentioned during direct examination.

Bertram did not immediately return the T-shirt. So, Webb used one of Respondent's ''Message Reply'' forms to notify Bertram that, as Webb put it when testifying, ''[I]f he wasn't going to use it the way it was intended to . . . be used, if he would please return it.'' In addition, it is uncontroverted that the message imposed a noon, Friday deadline for compliance, although it apparently contained no overt warning of discipline for noncompliance. When returning from lunch the following Friday, Bertram stopped by Webb's office and returned the T-shirt.

### G. *Individual Meetings with Some Employees*

On Thursday, October 5, and on Friday, October 6, the Webbs met with groups of 10 to 12 employees, to explain Respondent's position on employee-selection of the Union as a bargaining agent. There is no allegation that anything said during those group meetings had violated the Act though, as will be seen in subsection H, below, the events at one of them provide background for an event that is alleged to have done so.

The complaint enumerates various unlawful remarks allegedly made by Edward Webb during November conversations with individual employees. However, the evidence reveals that those conversations actually occurred in connection with the October 5 and 6 group meetings. Following those meetings, Edward Webb testified during direct examination, ''a number of people had asked for'' information regarding their employment records and Respondent's profit-sharing plan. During cross-examination, however, Webb conceded that only ''Some'' employees had initiated the individual meetings with him which had followed the group meetings. And he further conceded expressly that ''some of them did not.'' He went on to admit that, ''[p]robably Bob Cloakey might have arranged'' the meetings with employees who had not initiated them and, moreover, that he had directed Cloakey to arrange for ''some of them.''

[7] Bertram testified that, after work, he had helped his father on the latter's farm.

Kessler testified that he had been assigned a time to report to Webb's office. Once there, he testified, there had been discussion of wage percentages and raises he received while having worked for Respondent. That was followed, according to Kessler, by discussion of the Union and, during that portion of the conversation, Webb ''said if it gets in, I'll just close, and then he stopped and he said I'll retract that, or I'll take that back.'' Kessler testified that Webb had continued by saying, ''[I]f it did get in, or you know, that he would have a hard time negotiating with someone that called him a son of a bitch.'' In fact, Union Vice President Behr, testified Kessler, ''[H]ad said he had called [Webb] that at one of our meetings.''

Based on the foregoing testimony by Kessler, the General Counsel alleges that Webb had threatened to close if the Union became the bargaining agent of Respondent's employees and, additionally, had created the impression that employees' union activities were under surveillance, as a result of Webb's statement about Behr's S.O.B. comment. Webb agreed that he had met with Kessler ''after the group meetings'' and that, during their meeting, he had provided information concerning Kessler's wage increases while employed by Respondent. Webb testified that he had said that ''I couldn't understand why somebody would want a union in here.'' However, he denied having discussed closing the plant, denied that the issue of plant closure even had arisen, denied that either he or Kessler had mentioned the possibility of closing the plant, and denied having made any statements which he then said that he was retracting.

Bertram testified that, following the group meeting he had attended, ''Bob Cloakey I believe came and told me the time I was supposed to go up'' to Edward Webb's office. ''I had been in'' that office before, testified Bertram, ''[B]ut not for a personal one on one talk like that.'' According to Bertram, Webb asked, ''[W]hy I wanted a union'' and ''[W]hat I thought was going to improve and different questions of that sort,'' to which Bertram explained, ''[W]hat I thought would improve'' and that ''my turning point on when I contacted the [U]nion'' had been when he had received only ''a quarter raise on my yearly review[.]'' Webb's above-quoted questioning of Bertram is alleged to have constituted unlawful interrogation.

Webb acknowledged that he had participated in a one-on-one meeting with Bertram. During direct examination he claimed that the meeting had occurred when Bertram ''had asked to see his wages.'' Yet, when asked during cross-examination if Bertram, as well as Kessler, had been among the people whose individual meetings had been arranged by a supervisor, Webb reversed field by equivocating: ''I don't know. Could be.''

As to what had occurred during his one-on-one meeting with Bertram, Webb testified, ''I don't remember anything particular other than giving him the [wage] information.'' Nevertheless, his asserted lack of memory did not preclude Webb from denying that there had been any conversation about Bertram's union support and, moreover, denying that he had asked why Bertram wanted a union and had asked questions about Bertram's union activities. When asked if Bertram had discussed why he supported the Union, however, Webb answered merely, ''Not that I remember.''

As discussed in the immediately following subsection, and in section II,D, infra, during the afternoon of October 6 Respondent notified The Work Connection that it no longer needed the services of Tamara Sondrol. Based on his description of what Webb said during it, Remmel's one-on-one conversation with Webb obviously occurred afterward, though it is not clear how long afterward. Remmel testified that Webb started by claiming that Remmel had received ''better raises and bonuses than the [U]nion would have ever gotten for me'' and, later, asked if Remmel felt that employees had been unfairly treated. According to Remmel, he identified three employees, one being Sondrol, whom he felt Respondent had treated unfairly. Webb responded by explaining the situation of each of those three employees. Specifically, uncontradicted was Remmel's account that Webb had said that Sondrol ''didn't work for the company. He didn't fire her, the company that she worked for, the placement agency, had fired her[.]'' As will be seen, no such firing of Sondrol was made by The Work Connection.

Remmel testified that he mentioned that he believed that Respondent owed him a bonus for developing ''a new type of stud'' which Respondent was attempting to patent. Webb responded, testified Remmel, ''[T]hat I would get that bonus and that if my attitude had been better I would have gotten more bonuses by then too.'' That asserted remark is alleged by the General Counsel to have constituted a threat that Remmel ''would have received other bonuses had his attitude been better, in order to discourage employee support for the Union.''

Indeed, Webb did acknowledge that a bonus for developing a new stud had been discussed with Remmel and, further, that he had given Remmel ''a $500 bonus check,'' because, asserted Webb, he ''thought there was a possibility that it was something that was patentable, and I felt it was a little, maybe, above and beyond the normal situation so I gave him a $500 bonus check.'' Still, Webb further testified, Remmel had complained that he ''felt that he was worth more money,'' contending ''that he made me $250,000 last year on his R & D—things that he did in R & D.'' When he asked what Remmel meant, testified Webb, Remmel specified a trail tamer suspension which he had been involved in developing. Discussion of the $250,000 concluded when, Webb testified, he ''said why don't you over the weekend put down on paper what this $250,000 profit that you made for me was.''

Webb denied that, during this one-on-one conversation, he had criticized union activity in any way: ''No, I was very careful not to talk about the [U]nion other than the fact that I had said a number of times that based on the percent of pay increases I didn't understand why people would want a union.'' Nevertheless, when asked specifically if, during his meeting with Remmel, there had been any discussion of Remmel's union activity, Webb responded only, ''I don't remember.''

Webb did admit that, at one point during their conversation, he had said that Remmel ''could have or may have possibly received a bonus if he had a better attitude.'' Asked about his remark about Remmel's attitude, Webb answered, ''Well, he had a tendency to agree on something and then a few weeks or months later all of a sudden he's upset[.]'' Yet, Webb conceded that he had not explained to Remmel what was meant by the remark ''better attitude.''

H. *Discontinuance of Sondrol's Relationship with Respondent*

As set forth in subsection B, above, Tamara Sondrol had commenced working at Respondent on Monday, September 18. Vanderpool agreed that, once the contractual period with The Work Connection was completed, he had planned to hire her, so that she could attend school in Ohio and then operate the robotic welder. There was no equivocation by Vanderpool about these plans, assuming that Sondrol performed satisfactorily while working at Respondent before being sent to school in Ohio.

From September 18 through October 6, Sondrol had been actually paid by The Work Connection and Respondent characterized her as The Work Connection's employee. As Vanderpool testified, ''[T]hey were employing this individual at one location for us to use to see if this all works out.'' He acknowledged, however, that Respondent had been billed for the hourly pay—and apparently benefits costs—while Sondrol had worked at Paynesville. Furthermore, it is undisputed that, while working at Respondent, no one else from The Work Connection had been there to supervise Sondrol's work. Her assignments were determined and made by Respondent's supervisory personnel. The caliber of her work was evaluated by Respondent's supervisors. She punched Respondent's timecards. Her break and lunchtimes corresponded to those of Respondent's employees. In short, so far as the record reveals, save for the identity of the entity referred to as her employer, Sondrol had been treated as would an employee of Respondent during her employment at its place of business from September 18 through October 6.

There is no evidence that, while working there, Sondrol had engaged in any activity on behalf of the Union which might have come to Respondent's attention. In fact, so far as the evidence discloses, she did no more than sign a card authorizing the Union to represent her and talked about the Union on breaks with other employees. There is no evidence that Respondent learned about these activities by October 6.

Still, there were certain events which, the General Counsel argues, naturally would have led Respondent to suspect Sondrol of being sympathetic to the Union, and to believe that she would become a union supporter should she be added to Respondent's payroll. For example, as described in subsection F, above, she had asked Vanderpool if employees had to wear one of the ''VOTE NO'' T-shirts before having accepted one from him. Further, there is no evidence that she ever had worn that T-shirt at Respondent. Of course, it had been a similar failure to wear such a T-shirt which had gotten Bertram into trouble with Edward Webb, as described in subsection F, above.

A more significant event occurred in connection with the October 5 and 6 group meetings. Sondrol had not been scheduled to attend any of them. When she asked Cloakey why she had not been scheduled for attendance at a meeting, it is undisputed that he said she was not yet an employee of Respondent. She told him that she would like to attend one to ''get to know the company firsthand rather than [through] hearsay'' and Cloakey said he would ask Edward Webb. Shortly afterward, Cloakey returned and said that Sondrol could attend the 9:10 a.m. meeting on October 6.

At that meeting, testified Sondrol, she asked two questions and expressed one concern. As to the latter, she complained that the condition of her jig was preventing her from achieving 100 percent of Respondent's standard. As to her questions, she testified that one had resulted from Edward Webb's invitation for employees to bring their questions and concerns to him. According to Sondrol, she asked Webb if employees who did so ''would be treated differently'' and he responded in the negative.

She testified that her second question had pertained to a welder who would not be receiving a raise. According to Sondrol, she asked why an employee should not get a raise if it was the machine which was causing defects in product manufactured on it. Sondrol testified that Webb had replied that such an employee would get a raise if the machine was the problem, but that the meeting was not the place to discuss such a subject.

Edward Webb testified that Sondrol ''asked basically what I remember two items.'' He identified her problem with ''one of her fixtures'' and her question about a coworker's failure to receive a raise. However, while he did not acknowledge that she had asked about it, neither did he contest her testimony that she also had asked about possible reprisals against employees who brought questions or concerns to his attention, pursuant to his invitation to do so.

After that meeting the employees took their break. On returning from break, Sondrol was joined at her workplace by Webb, Vanderpool, and Cloakey who examined the jig about which she had complained during the group meeting. None of those three supervisors explained why it had been necessary for all of them to do so.

Vanderpool's testimony about that jig examination is significant, especially as Respondent argues that he had been the official who had made the decision later that same day to cease utilizing Sondrol's services. During direct examination, he denied unequivocally having received any report about Sondrol's statements during the group meeting which she had attended. Yet, as he conceded having been one of the supervisors who inspected her jig shortly after Sondrol had complained about it during the group meeting, it is logical to doubt his denial.

Vanderpool admitted during cross-examination that he had met in his office with Edward Webb and Cloakey immediately after the group meeting which Sondrol had attended. He then renewed his earlier denial that he had been told what Sondrol had said during that group meeting. He even denied having been told about her problem with her jig. When he next was asked how he had learned of that problem, Vanderpool testified, ''Ed came down and said to me, he said we got a problem with the jig and follow me, so we went out there and looked at the jig.''

Yet, any seeming plausibility to that latter description tends to be undermined by Vanderpool's earlier above-described admission that he had met in his office with Webb and Cloakey immediately after the 9:10 a.m. group meeting on October 6. One can speculate that the jig had not been discussed during that office meeting. But, Vanderpool never testified, nor did Webb and Cloakey, that it had not been discussed there. In fact, none of those three supervisors explained what had been discussed during their meeting after the 9:10 a.m. group meeting on October 6. Given the proximity of the two meetings, it is difficult to avoid inferring that the events occurring during the one with the employees, in fact, had been discussed during the one among the supervisors.

Such an inference tends to be further confirmed by what occurred when counsel returned to cross-examining him about the events which had followed the group meeting. For, rather than simply answer questions, Vanderpool began fencing, obviously attempting to avoid making any admissions while also trying to avoid inconsistencies between his answers:

> Q. When you were in the office with Mr. Webb and Mr. Cloakey for at least 20 minutes between the time the group meeting ended and the time you went out to check Tamara Sondrol's jig weren't you?
>
> A. I can't tell you that, I don't know. I am in Ed's—what was I in Ed's office supposedly or was I in my office?
>
> Q. Your office.
>
> A. Very seldom was there any lengthy meetings that occur in my office. I could have been in Ed's office for that length of time. My office is crowded.

Later that same day, Vanderpool called The Work Connection and gave notice that Respondent no longer wanted Sondrol to report to Paynesville and, further, did not intend to hire her. Respondent's telephone records reveal that on that date three calls were placed to The Work Connection: at 12:26 p.m., at 2:24 p.m., and at 3:29 p.m. Obviously, in whichever of these calls notice was given regarding Sondrol, that notice had to have occurred after Sondrol's remarks during the 9:10 a.m. group meeting with the Webbs. And the call also had to have occurred after the following meeting of Edward Webb, Vanderpool, and Cloakey. The General Counsel urges that, with regard to Sondrol, Respondent and The Work Connection had been a joint employer of Sondrol, while she worked at Paynesville, and, therefore, Respondent had discharged her on October 6 in violation of the Act. Alternatively, the General Counsel argues that Respondent had intended to hire Sondrol, but refused to do so because it suspected her of being union or potential union supporter.

Respondent disputes those arguments, as discussed more fully in section II,D, infra. Essentially, as described in subsection B, above, Respondent had been seeking a commitment for long-term employment from whomever it sent to robotic training and assigned to operate the robotic welder. Vanderpool testified that as time passed, after she had begun working at Paynesville on September 18, he ''started being a little nervous,'' as a result of Sondrol's seeming indifference to working for Respondent. Given the 60-day money back guarantee for the robotic welder, the investment of time, and money for schooling the person who would operate it, and Sondrol's seeming reluctance to be enthusiastic about long-term employment with Respondent, Vanderpool testified that he decided on October 6 to cease utilizing her services and select someone else for the Ohio schooling.

### I. *Disciplinary Actions of October 16*

The next set of events material to the amended and consolidated complaint occurred on Monday, October 16. As described in subsection C, above, on September 22, Respondent republished its proscription on use of doors other than the front one when coming to and leaving from work, and also during lunches and break periods. On October 16, Bertram and Remmel were each issued an employee disciplinary report for ''Failure to follow instructions'' and ''Violation of Company Rules.'' The ''Supervisor's Remarks'' portion of Remmel's disciplinary report states that he ''went into [sic] the shipping door'' at ''lunch time.'' The corresponding portion of Bertram's disciplinary report states that he left and entered by the side door and adds, ''IF HE DOES THIS AGAIN HE WILL BE DISMISSED.'' The General Counsel alleges that the two disciplinary reports were unlawfully motivated and, accordingly, violated Section 8(a)(3) and (1) of the Act.

In opposing any such conclusions, Respondent points to three factors. First, the rule restricting use of doors other than the front one had been a longstanding one. It predated by several years the Union's organizing campaign.

Second, Bertram admitted that he had gone out a side door to check damage to his car, from having struck a deer earlier that day, and had returned through that same side door. Remmel denied that he had used any door but the front one when entering or leaving the building for personal business. Still, he acknowledged that he had exited and re-entered either, or perhaps both, the self-opening garage door or the little swinging door in the dynamometer room in the course of performing his duties that day.

Third, Bertram and Remmel were not the only persons who received disciplinary reports on October 16 for using other than the front door. Greg Ranthum also received one that day. Moreover, on October 24 disciplinary reports were issued to Jeff Oliver and Yvette Andrews. On October 25, a disciplinary report was issued to Brenda Lang. Significantly, Ranthum's disciplinary report had been issued for having used the same side door as Remmel had been disciplined for using. And Lang's disciplinary report had been for using the same side door as had Bertram had used and been disciplined for using on October 16.

Nonetheless, the General Counsel points to the conceded fact that no one ever had been disciplined prior to October 16 for using other than the front door.

In addition to receiving the disciplinary report on October 16, Remmel also was handed an ''INTERNAL MEMO'' from Vanderpool. In pertinent part, it states:

> It has been brought to my attention by other Koronis Parts employees that you are very unhappy with your current wages at Koronis Parts. It is Koronis Parts Policy to do everything possible to keep our employees happy, as happy employees are productive employees. Koronis policy is that any work or wage concerns are to be handled within our procedures and that is, you need to discuss this with your direct supervisor not other employees. Other employees cannot solve your concerns. You know what Ed's feelings are with his employees. That all employees should enjoy their work and if they don't they should discuss it with their supervisors. If that is not satisfactory see ED. If you are still unhappy he asked that you look for a job that makes you happy.
>
> Based on your voiced unhappiness and your current attitude, Ed offered you a day off with pay to look for another job that meets your goals. You stated that Willmar Manufacturing is looking for an R and D person that pays $14–$16 per hour. You were given the opportunity to go last week but didn't. I suggest you

> arrange to apply at the other Companies by this Thursday as this paid offer expires on 10–19–95.

The complaint alleges that the memo had been issued in retaliation for Remmel's support for the Union and to discourage employee support for it.

Respondent contends that it had been dissatisfied with Remmel's performance, citing as asserted examples Remmel's wandering and inability to ''keep track of him'' when he was supposed to be working on specific projects, as well as his inability to finish projects after starting them. Vanderpool testified that Remmel ''just seemed to be unhappy,'' and after ''a series of meetings'' at which the ''kind of things he was so unhappy about'' were discussed, Vanderpool offered Remmel a paid day off to look for another job. However, testified Vanderpool, Remmel ''was always wanting me to write everything down and document it, so I typed up a form that I gave him that said exactly what we talked about at the meeting so he didn't think . . . we are not going to pay him.'' At no point did Vanderpool explain the disparity between his testimony and the above-quoted wording of his memo, which quite clearly is addressed only to dissatisfaction with wages.

### J. *Alleged Interrogation of Yvette L. Andrews*

A final October event involves alleged unlawful interrogation of wear bar department employee Yvette L. Andrews by Lenz.[8] Andrews testified that, as she was getting ready to resume work after the morning break, Lenz approached and asked, ''[I]f I had attended the union meeting.'' When she replied that she had done so, to ''find out some information about the [U]nion because I had never been to one before and I want to have some questions answered,'' testified Andrews, Lenz ''said yeah, I had every right to go to these meetings and to get my questions answered and find out information but they were going to lie to me anyway.''

It developed during cross-examination that the above-quoted question, which Andrews attributed to Lenz, was not consistent with the question described by Andrews in her prehearing affidavit: ''She . . . asked me if I *was going* to the union meeting.'' (Emphasis added.) Yet, Andrews appeared not to truly appreciate the distinction in verb tense and, further, maintained while testifying that ''[t]he conversation took place the day after'' a union meeting which she had attended. Indeed, her affidavit's description of Lenz' question is preceded by a sentence which reads, ''It was on a Friday morning, the morning *after* I attended a Thursday night union meeting. (Emphasis added.)

In the final analysis, the distinction in verb tense, as well as the disparity in date, is much ado about nothing. For, called as a witness by Respondent, Lenz never denied with particularity having questioned Andrews. Further, asked if she had ever discussed with Andrews the subject of going to union meetings, Lenz answered, ''I don't think that I ever discussed anything with her but I did try to encourage everybody to go to at least one meeting.'' Yet, Lenz never identified even one employee whom she had tried to encourage ''to go to at least one meeting.'' Nor did Lenz testify with specificity regarding her purported words of encouragement. No employee, other than Andrews, appeared as a witness to corroborate Lenz' asserted encouragement to attend at least one union meeting. And, of course, Andrews would be encompassed by the general term ''everybody.''

### K. *Disciplinary Reports for Unauthorized use of Company Telephones*

On November 7 Bertram and Kessler each received employee disciplinary reports. Both were for ''Improper Conduct,'' ''Theft (Stealing),'' and ''Violation of Company Rules and Conduct.'' The ''Supervisor's Remarks'' portion of Kessler's disciplinary report states:

> USING THE COMPANYS [SIC] DIRECT DIAL PHONE SYSTEM TO MAKE PERSONAL PHONE CALLS BOTH DURING WORK HOURS AND OR DURING BREAKS ARE NOT ALLOWED. I CONSIDER THIS AS IMPROPER CONDUCT AND THEFT. ANY FURTHER LIKE CONDUCT COULD CAUSE TERMINATION.

The corresponding section of the disciplinary report issued to Bertram recites:

> ON NOV. 6, 1995 BILL MADE A PHONE CALL TO GEORGE BEHR JR. THIS WAS A LONG DISTANCE PHONE CALL, BILL DID NOT HAVE PERMISSION TO MAKE THIS PHONE CALL WHICH COSTS THE COMPANY MONEY, AS FAR AS I AM CONCERNED THIS IS STEALING WHICH IS NOT TOLERATED.

Both employee disciplinary reports are alleged as violations of Section 8(a)(3) and (1) of the Act.

Page 2 of the ''COMPANY POLICY,'' which became ''Effective 4–8–91''—and, as far as the record discloses, remained effective on November 7—states, ''Personal phone calls or visitors will not be allowed during working hours without prior arrangements.'' Kessler acknowledged that he had been aware of Respondent's policy that no personal calls should be made on its phones without prior approval from a supervisor. In contrast, Bertram claimed not to know if Respondent had a policy of asking permission to make personal calls on its phones. He did acknowledge, however, having received a copy of the above-mentioned ''COMPANY POLICY'' effective April 8, 1991.

A somewhat different explanation for each of the two disciplinary reports was advanced by Cloakey, who assertedly had initiated the sequence of events which led to issuance of both. ''I had noticed that [Kessler] was on the phone quite a bit,'' he testified, and ''I talked to Kathy Webb and asked her if it was possible to get all the phone records off of that calling number.'' The calling number refers to the code number which Respondent had assigned to Kessler, as it does to some of its other personnel, for making business-related calls. According to Cloakey, Kathleen Webb had said that it was possible to do so and, having obtained those records, Cloakey called every telephone number listed for Kessler's code number, discovering that there had been ''thirty some'' personal calls made by him.

[8] Par. 6(m) of the amended and consolidated complaint alleges that this had occurred during late November or early December. That pleading is supported by Andrews's prehearing affidavit. When she testified, however, Andrews was firm, despite having her attention directed to the affidavit, that she had been questioned about a month after starting work for Respondent on September 18.

As to Bertram, to whom no code number ever had been assigned, Cloakey testified that ''I happened to see him on the phone,'' which he regarded as an ''unusual occurrence,'' and, again, went to Kathleen Webb who showed Cloakey how to redial a number called from Respondent's system. He did so and, testified Cloakey, ''[G]ot an answering machine for George Behr, Jr.''

Edward Webb signed Kessler's disciplinary report regarding use of the telephone. He testified on direct examination that his wife ''came to me with the phone records and I asked her . . . to ask Bob to go through the records and check the phones.'' During cross-examination, however, Edward Webb testified inconsistently that ''I believe it was Bob [Cloakey] or Kathy, my wife'' who had the idea of auditing Kessler's phone calls. Aside from who had initiated the idea of auditing those calls, during direct examination Edward Webb testified that it had been Cloakey who had checked the telephone records for Kessler's personal calls. But during cross-examination, Edward Webb testified, ''[T]hat Kathy looked because those are the only phone calls [sic] records that she had at that time[.]'' Kathleen Webb was never called by Respondent to clarify the discrepancies in her husband's descriptions, though she clearly was available as a witness for Respondent.

During direct examination, when asked about his involvement in issuing the warning notice of November 7 to Bertram, Edward Webb testified merely, ''I knew about it after it happened obviously.'' During cross-examination, however, he testified that he had known on October 6 about Bertram's telephone call, but that ''at that point I didn't. I wasn't told'' that Behr had been the party to whom Bertram had placed the call. ''Nobody knew that that I'm aware of,'' he added.

By the time that the November 7 disciplinary report had issued, testified Webb, he had known that it had been Behr whom Bertram had called. He had been told that, Webb testified, by Mark Svejkovsky, Respondent's controller. Asked how Svejkovsky had known whom Bertram had called, Edward Webb testified that Svejkovsky had ''called the phone company and traced the phone call.'' Of course, that latter account contradicted the one set forth above which Cloakey had advanced. Svejkovsky was called as a witness by Respondent. Yet, he gave no testimony about having participated in the events which led to issuance of the November 7 disciplinary report to Bertram. Moreover, while he is listed as one of the ''Witnesses'' on the disciplinary report issued to Kessler on November 7, at no point does Svejkovsky's name appear on the disciplinary report issued to Bertram.

As cross-examination of Edward Webb progressed, he modified somewhat his above-described testimony about the trace of Bertram's telephone call: ''Well, I talked to Kathy. Mark Svejkovsky made the phone call and I believe Kathy, after we got the phone number, called to verify who it was, or maybe it was Bob Cloakey. And it was Mr. Behr's residence.'' Of course, at no point was Kathleen Webb called as a witness to straighten out her husband's sometimes conflicting testimony about the sequence of events which supposedly had led to issuance of the November 7 disciplinary report to Bertram.

Bertram admitted that he had called Behr from Respondent's telephone on November 6, without first having obtained permission to place a personal call on Respondent's telephone. Both he and Kessler testified that, during a break that day, they had gone to the machine shop office where Bertram had placed the call to Behr, as Kessler worked one of the newsletters. Both testified that Kathleen Webb and Cloakey had come by and had said that the two employees should not be there. According to Bertram, he and Kessler had been told that ''there were crumbs and stuff getting on the floor.'' It is uncontroverted that nothing was said about Bertram being on the telephone. Still, he was later called to Cloakey's office where he was handed the above-described employee disciplinary report.

In contrast, Kessler received his disciplinary report during a meeting in the office with Edward Webb, Vanderpool, and Cloakey.[9] Kessler testified that he was informed that he had used his phone code to make unauthorized, excessive long-distance calls, that he had never offered to pay for those calls, that such conduct constituted stealing, and that he should pay back the costs of those calls. According to Kessler, he protested that when he had made the first call, to his army reserve unit, he had asked Cloakey and had offered to pay for the call. When he made subsequent personal calls, he testified that he explained during the meeting, he had asked Cloakey and had offered to pay for the calls, but he never received a bill from Respondent for any of those calls. So, he told Respondent's officials, he simply had ceased asking Cloakey before making personal calls. ''I don't know their exact response'' to his explanation during the meeting, testified Kessler, ''I think they rather doubted that I had said it.'' However, Cloakey and Webb testified that the former had been told about and had authorized only the first of Kessler's personal calls, the one to the army reserve unit.

Edward Webb testified that, as a result of the investigation of Kessler's telephone calls, Cloakey ''found 37 phone calls between 7–5–95 and 10–18–95.'' During his and Vanderpool's ensuing meeting with Kessler, testified Webb, Kessler claimed that he had received permission from Cloakey to make the calls. But, when Cloakey was summoned into the meeting, Webb testified, ''Cloakey said that he only had authorized Kessler's army reserve call during the first one or two days that Kessler had been employed by Respondent.'' Cloakey corroborated that account by Edward Webb.

The meeting concluded with Kessler offering to pay for the calls and with Edward Webb saying that Kessler would have to get the telephone records. Kessler testified that he obtained those records from Edward Webb, who had them on his desk during the meeting; Webb testified that Kessler had gotten those records from Kathleen Webb. Of course, she gave no testimony concerning that subject.

Edward Webb claimed that, after obtaining the telephone records, Kessler had ''found 72 phone calls and he gave that information to Kathy [Webb].'' Kessler testified that his review of those records revealed that ''I had made close to 40 calls and they added up to about $28 total.'' Asked if Kessler ever paid for those calls, Edward Webb answered simply, ''No, he did not.'' Kessler testified that, after he had totaled the calls and their cost, he had asked Kathleen Webb ''to review it again, and add the tax and stuff in, and I would write them a check for it.'' He testified without contradiction, however, that he never received that amount, nor a re-

[9] Cloakey had not been present at the beginning of that meeting.

quest for payment of it, from Kathleen Webb. Respondent's witnesses advanced no explanation for never having attempted to collect from Kessler the amount of his unauthorized personal telephone calls.

### L. *Issuance of Changed Company Policy About Discussion of Wages*

Respondent had put into effect on April 8, 1991, a ''COMPANY POLICY'' handbook. It had a section pertaining to ''WAGES'' which stated:

> A new employee's starting wage will be based on the Company's guidelines set at that time. Wage increases reflect on your position within the Company, your job performance and your length of service with the Company. Wages are normally reviewed on an annual basis with variations depending on skill levels and job performance.

Edward Webb testified that there had been occasional updates to the handbook. But, Respondent presented no evidence of any modification to the above-quoted provision prior to November 14.

On that date a revised ''COMPANY POLICY'' regarding wages was published by Respondent:

> A new employee's starting wage will be based on current Company guidelines and will be agreed upon by both the employer and employee. Wage increases reflect on your position within the Company, your job performance and your length of service with the Company. Wages are normally reviewed on an annual basis with variations depending on skill levels and job performance.

Below that language, with a border drawn around them, appear the following two sentences: ''Wages paid to employees by the Company are personal and confidential. The Company asks that wage discussions be limited between the employee and their supervisor, plant manager or Company owners only.''

Respondent provided no explanation for the change in the first sentence of the section: from solely Respondent's guidelines to those guidelines plus agreement between Respondent and new employees. Nor was any explanation advanced for the newly added, bordered sentences. Edward Webb denied flatly that it prohibited employees from discussing wages. And, disregarding the plain meaning of ''personal and confidential'' in the first sentence, he testified that:

> In the policy there's [a] small paragraph asking that employees if they have a problem with wages that we would request that they talk to a supervisor or management, and the reason for it is that if, for instance, somebody felt they had more wages coming or a raise or wasn't happy with something[,] that talking to another employee wouldn't solve their problem. What they need to do is talk to somebody that could solve the problem.

Webb denied that anyone ever had been disciplined for discussing wages and there is no evidence to the contrary.

### M. *Bertram Sent Home for Lack of Work*

The amended and consolidated complaint alleges that on Tuesday, November 21, Respondent acted for an unlawful motive by sending Bertram home and by refusing to pay him for that day. There is virtually no dispute about the sequence of events underlying that allegation. The motor went down on the induction welding machine water pump, through no fault of Bertram. It had to be sent out for repair. Cloakey and Vanderpool said that ''there was no other work for Bertram to perform and that he should go home for the rest of that day, but should call at the end of the day to ascertain if the motor was fixed, so that Bertram could resume work on the following day.'' Bertram did so and was able to return to work the next morning. He was not paid for work time lost as a result of the motor's repair.

Neither Cloakey nor Vanderpool contradicted Bertram's testimony that, when told that he was being sent home, he protested that Respondent had located work for other employees confronting similar situations. In fact, it is undisputed that Bertram had been the first employee ever sent home, rather than being assigned to other work, whenever machinery had broken down.

On the other hand, there is no particularized evidence of any work which Bertram could have performed that day in any other area of Respondent's Paynesville place of business, save for in the fiberglass plant. However, Bertram conceded that, in the past, he had told Respondent's officials that he did not want to work there, because the fiberglass adversely affected his skin. Furthermore, over the course of days ensuing after November 21, Bertram was offered overtime work to compensate him for income lost as a consequence of being sent home early on that Tuesday. He admittedly turned down that overtime offer ''because I was busy,'' he testified, and ''had other obligations.''

### N. *Termination of Allan Remmel*

Wednesday, November 22, was the day on which Remmel was terminated. That event is discussed more fully in section II,G, infra. At this point, the significant considerations are that Remmel was told on November 22 that Respondent intended to sell its clutch department, where Remmel had been the only employee working, because sales had not been satisfactory, and there was no other work which Respondent wanted Remmel to perform. As discussed in subsection I, above, Respondent assertedly had been dissatisfied with Remmel's wandering around the premises and his inability to finish projects assigned to him.

Significant to his termination is a ''CLUTCH DEPARTMENT JOB DESCRIPTION'' signed by Edward Webb and by Remmel 1 year earlier, on November 25, 1994. The text of that document recites:

> 1. Oversee the Clutch Dept.
> 2. Organize the Cluch Department
>
> A. Write or rewrite instructions for the consumer/dealer manual 12–31–94
>
> B. Determine a formula for new clutch applications and write it down, along with examples. 12–31–94
>
> C. Reduce parts and costs

D. Arrange shelving etc. in the clutch department so that it is neat and orderly. Make sure parts are in a numerical sequence and arranged appropriately on the shelf so that assembly will be the most efficient. 12–31–94

E. Write complete instructions for the assembly of the clutch to train others to build the clutch and balance it. Make sure those instructions are posted so that the others can help if needed. 12–31–94

F. Application chart needs to be ready for catalog by 01–25–95. Along with advertising information.

3. Your involvement in R and D projects will be directed by Ed and or Larry.

4. Daily goals sheet will be kept and turned in to Bruce each day of all projects started and completed. This is building clutches, writing instructions, working on the application chart, organizing parts, etc.

5. Tools and projects kept neat and orderly and all tools put away at the end of each day and projects organized.

6. Work on personal projects at home and not in R and D.

7. Monitor machine shop so that work is done for you. Be sure your work is scheduled in advance and that it is done on time.

8. Wage will rise to $28,000 and you will get a $1,000 bonus in the spring if we don't have to go to the mountains to get proper high altitude applications. We are expecting our clutch sales to reach 475 minimum for 1994–95. If clutch sales reach 650 at year end 1994–95 you will get another $1,000 bonus.

9. This clutch department is being studied for 1 year to monitor success and will be evaluated 1 year from now. Our goals for future clutch sales are as follows

| | |
|---|---|
| 94–95 | 650 |
| 95–96 | 1300 |
| 96–97 | 1690 |
| 97–98 | 2200 |

10. Clean up all front suspension projects in R and D by 12–01–94 and direct your attention to the clutch department.

In the final analysis, paragraph 9 provides Respondent's asserted basis for the decision to terminate Remmel, since clutch sales did not achieve by November the number specified in the job description for 1994–1995.

Edward Webb testified that the job description ''was a one year agreement for [Remmel's] employment at'' Respondent. It resulted, he further testified, from the resignation of prior clutch department manager Duane Watt, with the result that Remmel was asked if he would take over the department. According to Webb, ''[W]e sat down and we talked and discussed the number of clutches that were sold in the last three years, and what our goals were for the future years,'' based on prior discussions between Webb and Vanderpool.

Remmel said that he would consider taking the position, Webb testified, but only if he got more money. And, as a result, item 8 was included in the job description. In return, Webb testified that he told Remmel, ''We are expecting our clutch sales to reach 475 minimum for 1994–1995. If clutches reach 650 at year end 94–95, you will get another $10,000 bonus.'' In addition, testified Webb, he warned Remmel that ''if the minimum wasn't met, there wouldn't be a position for Allan.'' According to Webb, he specifically had informed Remmel at that time that the clutch department was ''the only position'' which Respondent had available for Remmel.

Vanderpool testified that he had discussed working in the clutch department with Remmel even before Webb had become involved in those conversations with Remmel. According to Vanderpool, though he had been willing to move into the clutch department, Remmel ''expressed interest that he should have an increase in salary because his responsibilities'' would be changing. It was that exchange which, testified Vanderpool, led to preparation of the ''CLUTCH DEPARTMENT JOB DESCRIPTION'': ''we wanted to be real clear with Allan on exactly what was going on, where we were headed and what our expectations were and why he was going to have a rise [sic] in wages, what our expectations were for that rise [sic] in wages and to a degree a list of what we expected to take place[.]'' Although he had prepared the job description, Vanderpool testified that he had not been present when it had been signed by Webb and Remmel.

Remmel could hardly deny having signed the job description. However, while he conceded that it had been important in his relationship with Respondent, he claimed, ''It isn't a job description, it's a clutch department job description,'' and claimed further that, while he had asked for a job description for himself, Respondent never had given him one.

More significantly, Remmel denied that there had been any discussion between himself and Webb before the clutch department job description had been prepared. Furthermore, Remmel testified that at the time it had been given to him, he had told Vanderpool ''that these goals [in par. 9] were, in my opinion, unrealistic.'' Remmel also testified that he never had been told what would be the outcome if those stated goals were not achieved. Yet, Remmel acknowledged that he later told Vanderpool that ''if my job depended on the clutch production that they were forecasting I didn't think I could produce it and they might as well fire me then,'' but Vanderpool had replied, ''[O]h, no, your job isn't dependent on this clutch department work or assessing [sic] it.'' According to Remmel, that conversation had occurred, ''Within two months of my starting in the clutch department.''

Vanderpool did not deny having given that assurance to Remmel. Moreover, Vanderpool agreed that Remmel ''did express some concern about reaching the sale of 475 clutches,'' though Vanderpool testified that Remmel had not done so until ''I would think March or so maybe.'' In response, testified Vanderpool, he had told Remmel ''to work harder[.]'' In addition, Vanderpool testified, Remmel had expressed concern about the prices at which Respondent was selling clutches.

### O. *Webb's Statements to Bertram About Breaktime Literature Distrbution*

Kessler testified that his last day of work for Respondent had been approximately November 27. Webb testified that ''after Bob Kessler had left,'' Bertram had been passing out union literature during break period. Because of the conversation between Kessler and Cloakey, discussed in subsection E, above, regarding passing out campaign literature only after work, Webb approached Bertram about breaktime

literature distribution. In the process, alleges the complaint, Respondent unlawfully threatened that Bertram could not pass out union literature during breaks.

Bertram testified that, consistent with Cloakey's request of Kessler, the Union's supporters had tried confining literature distribution to after work hours. But, that arrangement impaired their ability to distribute literature to employees who continued working after the normal quitting time, testified Bertram, and so breaktime literature distribution was resumed.

According to Bertram, when he was approached by Webb, the latter asked if Bertram had spoken with Kessler about distributing literature. In response, Bertram acknowledged that there had been an agreement between Cloakey and Kessler, but told Webb that it had not worked out, and could not work out because literature distribution to late working employees would be impaired. Bertram testified that, before walking away, Webb said that if Bertram kept distributing literature during breaks, ''[W]e'll be talking again or something of that sort.''

During direct examination, Webb testified that he merely had asked if Bertram was aware of the agreement for both sides to distribute literature only after hours and that Bertram had retorted, ''[Y]es, but he didn't care,'' which ended further discussion between them. Asked about that conversation during cross-examination, however, Webb testified that when he had asked if Bertram would honor Kessler and Cloakey's agreement, concerning the time of literature distribution, Bertram had ''said, no.'' Asked if that answer meant that Bertram ''didn't say, I don't care,'' Webb contradicted his above-described testimony during direct examination by answering, ''Well, I don't think that was—I don't know if that was my testimony.''

### P. *Mid-December Conversations Between Cloakey and McCann*

Bar-straightener Peter McCann—whose name appeared as an organizing campaign member in the Union's September 15 letter, and who had helped Bertram pass out union literature one early December day—testified that, after punching in for work 1 day in mid-December, he had been summoned to Cloakey's office. There, testified McCann, Cloakey asked, ''[W]hat I thought about the [U]nion,'' to which McCann responded, ''[T]here were some good things that I seen and some bad things.''

As he was leaving work 2 or 3 days' later, McCann testified, he again was summoned to Cloakey's office where Cloakey asked, ''[H]ow my work was going. If I liked my job,'' to which McCann replied that he did like his job. According to McCann, Cloakey inquired which job McCann liked best and, after McCann answered that ''Cloakey knew that McCann preferred bar straightening,'' Cloakey ''told me there is a lot of union stuff going on and I'd like to know what you think about the [U]nion and what people are talking about in the shop about union.''

McCann testified that he never really answered the latter question, pertaining to what people were talking about the Union, but instead ''pretty much answered . . . the same as I did two days earlier saying there is some good things and some bad things I've noticed about the [U]nion[.]'' When Cloakey ''didn't really say anything'' more, testified McCann, ''I just got up and proceeded to leave.'' McCann testified that on both days he had been frightened to answer Cloakey ''because I didn't know what would happen to myself[.]''

Cloakey denied that he ever had called McCann into his office to ask what McCann thought about unions and denied having asked McCann that question during mid-December, denied ever having called McCann into his office to ask about union activity, denied ever having asked McCann what the Union was doing, denied ever having asked McCann what people were saying about the Union, and denied ever having asked McCann about his union sympathies.

### Q. *Suspension of Daniel Whitcomb and Suspension and Discharge of Bertram*

The final allegations arise from an Occupational Safety and Health Administration (OSHA) test conducted at Respondent's facility on December 14. As set forth in subsection C, above, by then Bertram again was working in the wear bar department. A wear bar is a carbide bar installed on the bottom of a snowmobile ski so that it will be the wear bar, not the ski, which wears out as a result of vehicle operation.

Each wear bar has a groove cut in the bottom. Flux or paste is put into each groove to hold the pad or carbide which will be inserted into that groove. To position the flux, the wear bar is then braised by radio waves in an induction welding machine for approximately 30 to 40 seconds to a heat of approximately 1600 to 1700 degrees. Then, the carbide pad is pushed, by a hand-held tool, down into position in the groove after which, using another hand-held tool, called a holder, the induction machine operator moves a red-hot wear bar to a cooling table. The operator ordinarily stands essentially with the cooling table to his/her left and with the induction welding machine to his/her right. This allows heated wear bars to be moved from the induction machine to the cooling table with minimum movement.

As might be expected, this process of heating wear bars emits a certain amount of smoke and fumes. A venting system has been installed to carry most smoke and fumes away from the induction machine operator, as well as away from others working in the facility. It had been that system which was being tested during the morning of December 14 by OSHA. Because he was induction machine operator, Bertram wore a monitor intended to measure the volume of smoke and fumes not being vented.

During the afternoon that same day, Lenz reported that two employees—Paul Chupp and Jane Torborg—said that they had seen Bertram using the holder to carry heated bars from his induction machine-cooling table work area to a nearly work station, the paste table, where he added paste to those hot wear bars. As a result, unvented smoke and fumes were emitted, thereby skewing the OSHA test results to Respondent's disadvantage. It also was reported that press operator, Daniel L. Whitcomb, had been encouraging Bertram to engage in the conduct, from Whitcomb's nearby work station.

On December 15 Respondent set out to investigate Lenz' report. Whitcomb, Chupp, and Torborg were each summoned to a conference room where Webb, Vanderpool, and Cloakey sought descriptions of what each had seen Bertram doing during the preceding day's test. Chupp and Torborg described having seen Bertram carrying around hot wear bars

and adding flux or paste to them while away from the induction machine-cooling table venting system. Whitcomb said that he had not seen Bertram doing anything out of the ordinary, although he acknowledged that Bertram had only been putting paste on hot bars on December 14 while wearing the OSHA monitor. Whitcomb also told the three officials that if Bertram could have altered the OSHA test, he would have done so. Whitcomb denied that he had been encouraging Bertram in such an effort.

At the conclusion of his interview, Whitcomb was told that he was being sent home for the remainder of December 15. He protested, saying that he had not done anything wrong and was told that he would be paid for that time off. He was asked for a written account of what he had seen Bertram do. His statement recited: ''I saw Bill Bertram put paste on bars while he was wearing the device. I feel that if he was to alter the test he may have by putting the paste on.'' The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the Act by sending Whitcomb home for the remainder of that workday. Respondent argues that, given the report that Whitcomb had encouraged Bertram to add paste to heated wear bars while away from the induction machine-cooling table area, it had sent Whitcomb home as no more than a prudent step in an ongoing investigation of employee misconduct and, also, to prevent Whitcomb from conferring with anyone else, particularly Bertram, while continuing to work at Respondent's place of business for the remainder of December 15.

Bertram also was sent home on December 15 after being interviewed. During that interview, Bertram testified, Webb reviewed what had been reported about Bertram's December 14 conduct, saying ''that I was being unsafe during that and that it was a health hazard and I was trying to sabotage the safety test[.]'' According to Bertram, either Webb or Vanderpool pointed out ''that if I dropped the bar out of the holder . . . the bar is red hot and that if it hit someone's leg or something it could burn the leg.''

Significantly, Bertram's own account of the December 15 interview reveals that he never denied having carried hot bars away from his immediate work station on December 14. Instead, he claimed that he had done nothing different that day from his normal operating procedure and, he testified, ''[A]sked what safety rules I violated,'' to which Vanderpool responded that Bertram ''didn't violate any written safety rules but it was 'common sense rules' that I violated.''

When he was told on December 15 that he was being sent home, Bertram was told to call at 8:30 a.m. on Monday, December 18, the next workday. He did so and was told that he was still suspended. During a later telephone call that day, he was told to report at 7 a.m. on the following day. When he did so, he was discharged.

According to Bertram, on that day he had been escorted by Cloakey to the conference room where Vanderpool was present and Edward Webb eventually joined them. Bertram testified that, after being accused of sabotaging the OSHA test, ''They said when I carried the bar over hot to the flux machine to put more paste on it that supposedly someone had seen me waive it. One of the other employees supposedly had told them that they had seen me waving it around to cause smoke and . . . making sure that the smoke would go in the monitor.'' Bertram protested that he had not done anything differently that day than he had done on previous days, as far as carrying hot bars to the paste table.

Nevertheless, he was handed an employee discipline report stating that he was dismissed for ''Improper Conduct,'' ''Violation of Safety Rules,'' and ''Carelessness,'' and reciting, in the ''Supervisor's Remarks'' portion: ''1. UNSAFE WORK PRACTICES,'' ''2. AN EFFORT TO SABOTAGE SAFETY TEST,'' and, third, reasons set forth in an ''ATTACHED MEMO.'' That memo states, in pertinent part:

> During the air test Bill Bertram was observed by employees in the area taking the hot bars walking over to the pasting area (where Jane Torborg was working) and applying paste to the bars in an effort to get it to smoke and alter the results of the test. The altering of the test is a major problem when it was so obviously done on purpose. The other problem is the red hot bars are between 1600 and 1700 degrees and when he took the bar, turned around, moved to the pasting area (18 inches from Jane Torborg) and proceeded to add more paste, he endangered himself and those around him.

The memo concludes, ''He is being dismissed for creating an unsafe work area for himself and fellow employees and for trying to sabotage the test results.'' The General Counsel alleges that Bertram's suspension and discharge violated Section 8(a)(3) and (1) of the Act.

## II. DISCUSSION

### A. *Statements to Employees Regarding the Union*

An employer's statements to employees about a union are significant for three reasons. First, they may interfere with, restrain, or coerce employees in the exercise of Section 7 activities, thereby constituting independent violations of the Act. Second, where such unlawful statements are made, they may supply background for other actions and remarks, in the context of their utterance showing that those other actions and remarks also violate the Act. Finally, if made, they constitute evidence of the employer's state of mind or attitude toward union activities by its employees which, in turn, are relevant to alleged acts of discriminatory conduct.

Six instances of statements to employees specifically about the Union are alleged in the amended and consolidated complaint. Three of those instances pertain to remarks allegedly made by Edward Webb in the immediate wake of the October 5 and 6 meetings of the Webbs with groups of Respondent's employees, as discussed in section I,G, supra.

Thus, Kessler testified that Webb had threatened to close if the Union ''gets in'' and, after retracting that threat, said that he ''would have a hard time negotiating with,'' in effect, Behr because the latter had called Webb ''a son of a bitch.'' During his one-on-one conversation, Bertram testified that Webb had asked why Bertram wanted a union and, further, what Bertram felt ''was going to improve,'' in effect, as a result of unionization of Respondent's employees. Third, after being told, during his individual meeting, that he had received better raises and bonuses than the Union could have secured for him, and after being asked if he felt that employees had been treated unfairly, Remmel testified that Webb had said that Remmel would have gotten more bonuses if his attitude had been better.

Edward admitted, then claimed that he did not remember, having made the ''bad attitude'' remark to Remmel. He denied that he had asked the questions attributed to him by Bertram, though Webb conceded, ''I don't remember anything particular'' about his conversation with Bertram ''other than giving him the [wage] information''—a concession which tends to negate the reliability of Webb's denials of unlawful remarks to Bertram, since it displays Webb's uncertainty as to everything said during that conversation. Finally, Webb denied having made the plant closure statement to Kessler, though he did not deny having made the ''hard time negotiating'' statement during that one-on-one meeting.

When testifying, Webb did not appear to be doing so candidly. That conclusion is confirmed by a review of the record of his testimony. Illustrations of his self-contradictions and internal inconsistencies, as well as his inconsistencies with other evidence, are provided in the various subsections of section I, supra. For example, as described in section I,F, supra, Webb first claimed that he had received a report that Bertram ''had told someone'' about wearing the ''VOTE NO'' T-shirt in the pig barn, but then tried to portray Bertram in an even more unfavorable light by claiming that the latter had told that to ''other employees.'' After claiming that employees had requested individual meetings, as discussed in section I,G, Webb admitted that only ''some'' had done so and, moreover, admitted further that he had directed Cloakey to arrange for ''some'' of those meetings. He also vacillated as to what he had meant by Remmel's ''bad attitude.'' Several internal discrepancies were revealed by his telephone calls disciplinary reports, described in section I,K, and certain aspects of his accounts in connection with them were uncorroborated. I do not credit Edward Webb, except where other credible evidence lends support to his accounts.

In contrast, Kessler, at least, appeared to be testifying candidly. I credit his account that Webb had said he would ''just close'' if the Union ''gets in.'' A threat of plant closure should employees become represented, of course, is regarded under the Act as one of the ''hallmark'' and most serious violations of the Act. See, e.g., *Chemvet Labs, Inc. v. NLRB*, 497 F.2d 445, 448 (8th Cir. 1974). See also *Amalgamated Clothing Workers of America v. NLRB*, 527 F.2d 803, 807 (D.C. Cir. 1975), cert. denied 426 U.S. 907 (1976). For, closure would mean that personnel, such as Kessler, would be terminated, thereby losing their, and their families', means of livelihood.

As one of Respondent's two co-owners, Edward Webb obviously had the ability to take—or, at least, meaningfully influence taking—such a course of action as closure. To be sure, he did ''retract'' the threat. Yet, mere articulation of words such as ''retract'' or ''take back'' do not, standing alone, constitute a repudiation under the Act. *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). At no point did Webb assure Kessler that Respondent would not close if its employees chose representation by the Union. He did no more than retract articulation of a closure threat, leaving Kessler to fairly infer that it had been no more than the improvidence of uttering such a threat, as opposed to the intention to close, that was being retracted. Therefore, Respondent violated Section 8(a)(1) of the Act by threatening an employee with plant closure if the Union became the representative of employees working there.

Respondent argues that ''[t]o the extent it is claimed that department heads like Kathryn Lenz are supervisors, then Kessler is a supervisor, too, and is not protected by the National Labor Relations Act.'' In support of that argument, in its brief, Respondent points to evidence that Kessler ''participated in a warning notice and even signed it as a supervisor,'' ''acted as department head for the machine shop when Donovan Whitcomb was not available,'' and ''became involved in showing employees how to run equipment and generally directed their activities.'' Yet, in the context of this record, these are not so convincing indicia of supervisory status as Respondent seeks to portray.

''[T]he burden of proving that an individual is a supervisor is on the party alleging such status'' (citation omitted), and ''[t]he Board has a duty not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act.'' (Citation omitted.) *Azusa Ranch Market*, 321 NLRB 811 (1996). When asked by the General Counsel to describe Respondent's management hierarchy, Edward Webb included Lenz—at least initially—as wear bar department leadperson. But, Webb did not include, and made no mention whatsoever of, Kessler. Unlike Lenz, there is no evidence that, prior to the hearing in the instant case, Kessler had been classified or referred to by Respondent as a department head.

In a prehearing affidavit, Kessler stated that he supervised the machine shop more than Donovan Whitcomb, machine shop supervisor, and that he had directed employees in what they did in the machine shop. Yet, in describing what those conclusionary statements meant, Kessler testified, without contradiction, that he ''helped [employees] work on the machines,'' and ''I trained them, or I helped get, you know, when they were on a machine, I would help them change offsets on the machine[.]'' No official of Respondent disputed Kessler's testimony that ''I guess I was the most experienced CNC operator there, or person there[.]'' Also undisputed, were his specific denials that he had decided which machines employees would run, had participated in hiring decisions, had interviewed applicants, had attended supervisory or managerial meetings, and had been involved in Respondent's meetings with its managers and supervisors regarding the Union's campaign. In short, whatever authority Kessler may have exercised regarding work of others, so far as the evidence shows, had been routine and had been based on his superior knowledge and experience, without requiring the exercise of independent judgment. See, e.g., *Consolidated Services*, 321 NLRB 845 (1996), and cases cited therein.

Respondent relies somewhat heavily on the fact that once on a time—about October 23—Kessler had signed an employee disciplinary report, for Gary Steffenson, on the line above ''Signature of Supervisor.'' Still, there is no showing that he ever had done so on any other occasion. Further, there is no evidence that Kessler ordinarily had possessed authority to issue disciplinary reports. Consequently, so far as the record reveals, that single disciplinary report constituted no more that an ''incidental and extraordinary exception[ ] to . . . regular practice, and when looked against a total background do[es] not in any way show that [Kessler] had the authority to discipline or recommend the discipline of employees as one of his regular functions.'' *NLRB v. Orr Iron, Inc*., 508 F.2d 1305, 1307 (7th Cir. 1975). See also *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1157–

1158 (7th Cir. 1970), cert. denied 400 U.S. 831 (1970). The Board has long held that it does ''not consider [a] few isolated instances, in view of the record as a whole, to be sufficient to establish . . . possess[ion of] supervisory authority contemplated by Section 2(11) of the Act.'' *Commercial Fleet Wash, Inc*., 190 NLRB 326, 326 (1971). Especially is that conclusion valid where, as here, Kessler testified that he had been, in effect, directed by Cloakey to sign the Steffenson disciplinary report. Cloakey appeared as a witness for Respondent. But, he did not contradict that testimony by Kessler.

As to Kessler's testimony that he directed machine shop employees' activities whenever Donovan Whitcomb was ''doing other things,'' there is no evidence that Kessler had done so other than in a routine fashion, on the basis of his experience. To the extent that Respondent argues that such activity by Kessler shows that he had filled in as department head when Whitcomb had not been available, Respondent has failed to show that, on such occasions, Kessler exercised independent judgment in connection with any of the supervisory indicia enumerated in Section 2(11) of the Act. Nor has frequency of such occurrences been established. ''[S]pasmodic and infrequent assumption of a position of command and responsibility does not transform an otherwise rank-and-file worker into a 'supervisor.''' *NLRB v. Quincy Steel Casting Co*., 200 F.2d 293, 296 (1st Cir. 1952). In consequence, ''an employee does not acquire supervisor's status by reason of temporarily taking over the duties of an absent supervisor.'' *NLRB v. Sayers Printing Co*., 453 F.2d 810, 815 (8th Cir. 1971). Therefore, I conclude that Respondent has failed to establish, by a preponderance of the credible evidence, that Kessler had been a supervisor within the meaning of Section 2(11) of the Act while working for it.

Webb further violated Section 8(a)(1) of the Act when, during his meeting with Kessler, he warned that it would be hard to negotiate with someone who had called him an S.O.B. There is no evidence that Behr ever had made such a remark to Webb; Webb never testified that Behr had done so. The only evidence about Behr's S.O.B statement about Webb pertained to a statement made during a meeting between Behr and Respondent's employees. Respondent never explained how Webb would have learned what Behr had been saying to Respondent's employees at such a meeting. Furthermore, it is not evident from the record that Kessler would likely have concluded that Webb learned of the S.O.B. remark from some source other than by surveillance of what was being said the Union's meetings with Respondent's employees.

Accordingly, Webb's S.O.B. remark to Kessler created an impression that Respondent was engaging in surveillance of at least some union activities by its employees—''was closely monitoring the degree and extent of their organizing efforts and activities.'' (Footnote omitted.) *United Charter Service*, 306 NLRB 150, 151 (1992). In addressing that remark to Kessler, moreover, Webb advanced no ''assurance that no reprisals [would] be taken,'' and, as a result, left Kessler ''to conjure up various images of employer retaliation.'' *Dubin-Haskell Lining Corp. v. NLRB*, 375 F.2d 568, 571 (4th Cir. 1967).

In fact, Webb had earlier supplied explicitly one such image when he warned, during the same conversation, of closure should Respondent's employees choose to become represented. Therefore, his S.O.B. remark was coercive and, by creating an impression that at least some of the union activities of Respondent's employees were under surveillance, violated Section 8(a)(1) of the Act. See, e.g., *Filler Products v. NLRB*, 376 F.2d 369, 374–375 (4th Cir. 1967); *Dayco Corp. v. NLRB*, 382 F.2d 577, 579 (6th Cir. 1967).

In a similar conversation, Bertram was asked his reason for wanting a union and, also, what he thought would improve by having one. Viewed from Webb's perspective, Bertram seemed to be the Union's leading proponent at Paynesville. In fact, the Act does allow some flexibility for employers to engage in questioning, as part of the ongoing dialogue involved in employee choice regarding representation, of leading union proponents concerning the benefits those proponents foresee as resulting from selection of a bargaining agent. See *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). Yet, sight must not be lost of the fact that those proponents remain employees within the meaning of Section 2(3) of the Act. Their efforts to secure representation do not completely strip them of the Act's protection.

Here, it had been Webb—not Bertram—who, Webb conceded eventually, had initiated the one-on-one meeting between them. That meeting occurred in Webb's office where, it is not contested, Bertram have gone in the past, but never for such a one-on-one meeting with Edward Webb. The latter is one of the two highest ranking officials of Respondent. Before that one-on-one meeting, Webb and his wife had met with groups of employees, one of whom had been Bertram, and had expressed Respondent's opposition to unionization of Respondent's employees. Nothing unlawful in their doing so. To follow such a group meeting with individuals meetings with leading union proponents, however, tends naturally to give rise to employee apprehension concerning the reason(s) and consequence(s) of those individual meetings. For, having already made Respondent's position plain during the group meetings, there was no basis for an employee, such as Bertram, to understand why an individual meeting should be necessary. In fact, no such purpose was provided to him by Edward Webb.

Neither did Webb give any assurance to Bertram that the latter's answers would not be utilized as a basis for retaliating against Bertram nor, at least, for engaging in other unfair labor practices—such as implementing new benefits in response to improvements identified by Bertram, as a result of Webb's questions—to discourage employee support for the Union. Indeed, as concluded throughout this section, the questioning of Bertram occurred in a context of various unlawful statements and actions by Respondent's officials, including Webb. Further, so far as the evidence discloses, Webb never even assured Bertram that the latter was not obliged to answer Webb's questions and, moreover, was free not even to participate in the one-on-one meeting with Respondent's co-owner.

In sum, Bertram's support for the Union was known to Respondent by early October, but he remained a statutory employee entitled to the Act's protection. Given the above-described circumstances during and surrounding Webb's questioning of Bertram, even a leading employee proponent of unionization would naturally become apprehensive about possible adverse consequences. In the overall circumstances,

the questioning of Bertram had been coercive and did interfere with the exercise of employee right in violation of Section 8(a)(1) of the Act.

Any argument that the questioning of Bertram had been no more than an isolated occurrence—a one-time event—founders on the existence of two other considerations. First, the one-on-one meeting between Webb and Bertram had been but one of apparently a number of such meetings, according to Webb, with individual employees. To be sure, there is no evidence that Webb had questioned any employee other than Bertram during those individual meetings. Still, the questioning of Bertram did occur during a pattern of similar individual meetings. The existence of such a pattern cannot be ignored in evaluating any contention of isolatedness.

Second and, more importantly, Bertram would not be the lone employee questioned about the Union and about support and sympathy for it. Three other instances of statements to employees about the Union also involved interrogation of the employees. As described in section I,P, supra, bar straightener McCann testified that he twice had been called into Cloakey's office during mid-December. On the first occasion, he testified, Cloakey asked what McCann ''thought about the [U]nion'' and, on the second occasion, Cloakey repeated that question and, also, asked, ''[W]hat people are talking about in the shop about union.'' McCann appeared to be an honest individual and I credit his descriptions of those two conversations.

Of course, like Bertram, McCann had been an identified organizing campaign member. Still, as pointed out above, known union activism does not leave the activist as fair game for employer interference, restraint, and coercion. In neither of the mid-December conversations did Cloakey advance to McCann a reason for suddenly questioning him. Nor was a reason advanced during the hearing in the instant case. Moreover, Cloakey's questioning sought information about sympathies of employees other then activist McCann: ''[W]hat people are talking about in the shop about union.'' Such questioning, by its terms, had not been confined to other employees who also were union activists. Accordingly, it cannot be concluded that Cloakey's questioning sought no more than information confined to union activists—sought to dialogue about no more than the rationale for activists' continued support of the Union.

As with Webb and Bertram, Cloakey chose his own office—not the plant floor—as the situs for questioning McCann. During their second conversation, furthermore, Cloakey specifically interjected mention of McCann's job, how McCann liked that job and which job McCann preferred to perform. Again, no purpose for those questions had been advanced to McCann, nor was one advanced during the hearing. Certainly, an implied connection between the subjects of an employee's happiness with his job and the duties he was performing, on the one hand, and that employee's and his coworkers' support for a union, on the other, would not likely escape notice by the employee being interrogated. That is, an employee likely would become fearful that his answers to questioning about a union could lead his employer to deprive or reward that employee with jobs which he preferred, depending on the acceptability of that employee's answers to those questions by his supervisor.

In fact, McCann testified expressly that he had been frightened by the occurrence of the meetings and by the possible consequences of his answers. And his equivocal answers to Cloakey's questions tend, as an objective matter, to support McCann's testimony regarding his state of mind during the questioning.

As with Webb's questioning of Bertram during early October, Cloakey gave no assurances to McCann that the latter's answers would not adversely affect his employment by Respondent. Nor did Cloakey assure McCann that the latter need not answer the questions being put to him. To be sure, Cloakey is not a co-owner of Respondent. Still, he is, and was at the time, its plant manager. Thus, he hardly can be fairly characterized as a low-level supervisor. In any event, his questions about McCann's continued attitude toward the Union are essentially the same as the questions put by Webb, Respondent's co-owner, to Bertram. Further, as concluded in succeeding subsections, the questioning of McCann occurred against a background of numerous other unfair labor practices committed by Respondent. In the totality of these circumstances, I conclude that Cloakey's interrogation of McCann had been coercive and, consequently, that it violated Section 8(a)(1) of the Act.

Another conversation which involved interrogation occurred when Lenz asked wear bar department employee Andrews if the latter had attended or intended to attend a union meeting, as described in section I,J, supra. Respondent denies that allegation and, in addition, denies that Lenz had been a statutory supervisor and its agent. However, Edward Webb acknowledged that, during the representation proceeding arising from the Union's organizing campaign, Lenz had been found to be a statutory supervisor. The General Counsel argues that that finding is dispositive of Lenz' status in the instant case. But, that is not correct.

The instant case is not a ''related'' proceeding, inasmuch as this is a proceeding arising under Section 8(a)(1) and (3) of the Act and, consequently, is not one which bars relitigation of representation determinations concerning supervisory status under the Act. See *Clark & Wilkins Industries*, 290 NLRB 106 fn. 2 (1988); *Lab Glass Corp*., 296 NLRB 348, 350 (1989), and cases cited therein. Nevertheless, a preponderance of the credible evidence in the instant case establishes that Lenz had been a statutory supervisor and agent of Respondent at all material times.

Prior to the Union's organizing campaign Lenz, as well as others, had been called a supervisor by Respondent. At some point after that campaign began, that title was changed to lead person. Further displaying his lack of reliability, Edward Webb testified, ''I don't know if it totally has. It's unclear'' when that change in Lenz' title had occurred. Respondent adduced no evidence of any changes in Lenz' duties and responsibilities as a consequence of the change in her title. Indeed, asked, ''[W]hat some of those changes have been and specifically with regard to Kathy Lenz,'' Webb responded merely, ''Well, I'm not sure if Kathy Lenz fits under that category.''

When his attention was directed to the ''COMPANY POLICY'' handbook issued on November 14, mentioned in section I,L, supra, and he was asked if Lenz was considered a ''department head'' as recited in it, Webb resumed fencing with counsel, by answering, ''I don't know. That's pretty confusing just exactly who you are asking, you know, what is defined as a department head.'' Given the fact that he is Respondent's co-owner, and the further fact that he and his

wife are the cosigners of the ''Welcome new employee!'' covering letter for that handbook, Edward Webb's answer hardly instills confidence in the reliability of his testimony.

Ultimately, Webb did admit that a wear bar department employee who read the handbook would consider Lenz to be one of the two department heads for that department. According to that handbook, department heads possess authority to require employees to work overtime; to discuss with employees solutions to their job performance problems; to receive reports of on-the-job injuries; to receive reports of needed repairs and maintenance, and to ''contact the proper maintenance personnel'' for repairs; and to check that all doors and windows are secured at the end of working hours.

Most significantly, under the title ''CHAIN OF COMMAND,'' the handbook imposes a requirement that:

> Every employee . . . follow the chain of command in any and all cases. Each employee is to report directly to his/her department head. If an employee does not get sufficient satisfaction regarding his/her situation, he/she may go to management to resolve the situation.

Respondent presented no evidence that even tends to contradict the plain meaning of that handbook provision: that department heads, such as Lenz, possess authority to adjust employees' complaints—that is, grievances.

Called as witnesses for Respondent, former wear bar employee Paul Chupp agreed that, when he had worked for Respondent, Lenz had been ''a supervisor of the wear bar department[.]'' Also called as a witness for Respondent, Lenz gave no testimony concerning any change in her duties after Respondent had ceased calling her a supervisor and began calling her a department head. Consequently, I conclude that, at all material times, Kathryn Lenz had been a supervisor within the meaning of Section 2(11) of the Act and, as such, an agent of Respondent within the meaning of Section 2(13) of the Act. *Glenroy Construction Co*., 215 NLRB 866, 867 (1974), enfd. 527 F.2d 465 (7th Cir. 1975); *Ideal Elevator Corp*., 295 NLRB 347 fn. 2 (1989).

Whether Lenz asked if Andrews had attended a union meeting, as Andrews testified, or *was going* to attend one, as stated in Andrews' prehearing affidavit, turns out not to be a material consideration. As a general proposition, no statutory purpose is served by allowing employers to interrogate employees about whether they have attended or plan to attend union meetings.

Lenz attempted to supply a legitimate purpose for such a remark. Although she never categorically denied having asked if Andrews had attended, or intended to attend, a union meeting—''I don't *think* that I ever discussed anything with her'' (emphasis added)—she claimed that she had tried ''to encourage everybody to go to at least one [Union] meeting.'' Assuming, arguendo, that employers are free under the Act to encourage employees to attend at least one union meeting, that objective is not achieved by allowing employers to go one step further and interrogate employees as to whether they have attended, or will attend, a union meeting. Encouragement can be accomplished without such accompanying interrogation.

Beyond that, as pointed out in section I,J, supra, not only did Lenz not identify a single employee whom she supposedly had encouraged to attend a union meeting, but she never described exactly what she purportedly had said to encourage them to do so. The lone description in the record of what she had said about attending such a meeting was Andrews's ultimately uncontested recitation of what had been said to her by Lenz. Yet, in contrast to her asserted explanation for having spoken to employees about attending union meetings, Lenz' accompanying words to Andrews hardly constituted encouragement.

It is undisputed that Lenz said that Andrews ''had every right to go to these meetings and to get my questions answered and find out information[.]'' Nonetheless, a statement of an employee's right to do something hardly rises to the level of encouragement. Further, that remark was accompanied not by words of encouragement, but by words which tended to discourage attending such a meeting. For, Lenz never denied specifically having then said to Andrews that the Union was ''going to lie to me anyway.'' If so, there was no need for an employee to waste nonwork time attending such a meeting. In short, the undisputed account of Andrews refutes Lenz' asserted purpose for having spoken to employees about attendance at the Union's meetings.

To be sure, Lenz is a relatively low-level supervisor and her question to Andrews appears to have occurred on the work floor, as opposed to having been put to Andrews in an office. Still, as concluded above, Respondent has shown no legitimate purpose for having questioned Andrews about attending the Union's meetings. There is no evidence that Andrews had been an activist—much less, an open one—on behalf of the Union. As concluded in succeeding subsections, and above in this subsection, Respondent engaged in other unfair labor practices both before and after Lenz' interrogation of Andrews. Some of those unfair labor practices involved unlawful interrogation of employees. Consequently, there is no basis for concluding that Lenz' questioning of Andrews had occurred in an atmosphere otherwise free of unlawful words and conduct, nor in one otherwise free of unlawful interrogation of employees. Moreover, there is no evidence that Lenz informed Andrews of the purpose of questioning the latter, assured Andrews that no reprisals would be directed against her for her answer, nor informed Andrews that she need not answer Lenz' question. Therefore, I conclude that Lenz' interrogation of Andrews had been coercive and did violate Section 8(a)(1) of the Act.

This leaves for consideration the conversation during which Edward Webb admittedly said that Remmel ''could have or may have possibly received a bonus if he had a better attitude.'' Obviously, this remark referred to past situations, as illustrated by the context in which it had been uttered by Webb, as described in section I,G, supra. Still, it was a remark which had implications for Remmel's future situation at Respondent. After all, there is no evidence that Respondent had no intention of awarding future bonuses to employees. Even if there had been such evidence, there is no evidence that Respondent had communicated such a changed intention to any of its employees, particularly Remmel. To the contrary, either during this conversation, or in close proximity to it, Remmel had received a bonus for helping to develop a new type of stud.

The phrase ''better attitude'' is an inherently ambiguous one. It also is a subjective one, in the sense that Respondent determines whether an employee's attitude is, or is not, better. The conversation, during which Webb used that phrase,

had occurred shortly after a group meeting in which Remmel and other employees had been informed of the Webbs' opposition to unionization of Respondent's employees. Webb did not convincingly deny having initiated his one-on-one conversation with Remmel by expressly referring to the Union: by saying that Remmel had received ''better raises and bonuses than the [U]nion could have ever gotten for'' Remmel. In these circumstances, absent an alternative explanation, an employee could fairly conclude that ''better attitude'' encompassed sympathy and activism for representation. And inasmuch as bonuses still were a viable prospect for Respondent's employees, such an employee could fairly infer from that unexplained phrase that attitude toward unionization would be considered, at least as a factor, in determining whether or not to grant that employee bonuses in the future. Therefore, I conclude that Webb's ''better attitude'' statement, viewed objectively, constituted a threat that continued support for the Union would be taken into account in deciding whether or not to award bonuses to Remmel and, accordingly, that Webb's ''better attitude'' statement violated Section 8(a)(1) of the Act.

### B. *Interference with Employee Activity*

This subsection covers the amended and consolidated complaint's allegations that, in effect, Respondent restricted employees ability to engage in statutorily protected activity by prohibiting discussions of wages among themselves, by distributing and insisting that at least one employee wear a ''VOTE NO'' T-shirt, and by prohibiting breaktime distribution of union literature. As will be seen, I conclude that Respondent did violate the Act with the regard to the first and second of those allegations. However, the evidence fails to support a conclusion of violation in connection with distribution of the Union's literature during breaks.

As set forth in section I,L, supra, on November 14 Respondent issued an updated ''COMPANY POLICY'' handbook which made two changes in its policy concerning wages. The General Counsel voices no protest about the first change: from established starting wage rates exclusively on the basis of Respondent's guidelines, to establishing them based on those guidelines and, as well, the agreement of Respondent and the employees beginning work for it. The complaint does challenge the addition to that section which ''asks that wage discussions be limited between the employee and their [sic] supervisor, plant manager or Company owners only.'' On its face, that request constitutes an overly broad restriction which violates Section 8(a)(1) of the Act.

Wage levels, obviously, are one employment term which frequently provide a reason for employees' desire to organize and become represented by a bargaining agent. ''Early in the history of the administration of the Act the Board recognized the importance of freedom of communication to the free exercise of organization rights.'' *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542–543 (1972). Thus, a rule which prohibits employees from discussing wages among themselves, by requiring them to confine such discussions to ''their supervisors, plant manager or Company owners only'' violates the Act. ''No restrictions may be placed on the employees' right to discuss self-organization among themselves unless the employer can demonstrate that a restriction is necessary to maintain production or discipline.'' *NLRB v. Babcock & Wilcox Co*., 351 U.S. 105, 113 (1956). Respondent has not shown that the border rule had been added ''to maintain production or discipline.''

Respondent's situation is not salvaged by the fact that the newly announced rule merely ''asks,'' or ''requests,'' that employees limit their wage discussions to supervisors, managers and owners. For, a ''request'' that employees not discuss among themselves employment terms, such as wages, ''constitutes a clear restraint on the employees' Section 7 right to engage in concerted activities for mutual aid or protection concerning an undeniably significant term of employment.'' *Heck's, Inc*., 293 NLRB 1111, 1119 (1989). The rationale for that conclusion—that a ''request'' is as unlawful as an outright prohibition—''is not premised on mandatory phrasing, subjective impact, or even evidence of enforcement, but rather on the reasonable tendency of such a prohibition to coerce employees in the exercise of fundamental rights protected by the Act.'' *Radisson Plaza Minneapolis*, 307 NLRB 94, 94 (1992), enfd. 987 F.2d 1376 (8th Cir. 1993).

In fact, one earlier event shows that Respondent intended the new rule to be a direction, rather than a request. As quoted in section I,I, supra, on October 16, Remmel was handed an ''INTERNAL MEMO'' which stated that ''wage concerns'' need to be discussed ''with your direct supervisor not other employees,'' adding that if such discussions with Edward Webb still left Remmel unsatisfied about his wages, then he should ''look for a job that makes you happy.'' Such a statement suggests that Respondent regards the protected activity of discussing ''wage concerns'' with other employees as essentially incompatible with continued employment. See *NLRB v. Crystal Tire Co*., 410 F.2d 916, 918 (8th Cir. 1969). That is, it ''is essentially a thinly-veiled threat to fire [Remmel] for his [protected] activities and is thus violative of the Act.'' (Citation omitted.) *NLRB v. Intertherm, Inc*., 596 F.2d 275, 276 (8th Cir. 1979). As such, it constitutes a violation of Section 8(a)(1) of the Act. It also provides background evidence as to how Respondent's employees would evaluate use of the word ''asks'' in the newly revised and issued handbook.

Furthermore, the request was newly announced in the middle of an organizing campaign. During that campaign, as concluded in various subsections of this section, Respondent engaged in unlawful conduct in retaliation for employee support of the Union and to discourage such support by its employees. In these circumstances, it would be natural for employees to view what Respondent was ''ask[ing]'' as less request than direction. In these circumstances, I conclude that the rule interferes with employee exercise of Section 7 rights and, therefore, violates Section 8(a)(1) of the Act.

Respondent points out that there is no evidence that any employee ever had been disciplined for discussing wages with nonsupervisory or nonmanagerial personnel. Yet, the absence of enforcement, or lack of discipline, for violation of such a rule does not obviate the need for finding of a violation and for issuing a remedial order because of that violation. See, e.g., *Jas. Mathews & Co. v. NLRB*, 354 F.2d 432, 441 (8th Cir. 1965), cert. denied 384 U.S. 1002 (1966). Absent a showing of employee knowledge that there would be no discipline imposed for violating the bordered restriction, see, e.g., *SMI of Worcester, Inc*., 271 NLRB 1508, 1509 (1984), its nonenforcement does not erase its facial invalidity and the need to provide a remedy because of it. The most

that can be said about the absence of discipline for breach of the ''request'' is that the bordered addition to the wages section of the handbook achieved its purpose. That is, it succeeded in deterring discussion of wages among Respondent's employees.

Of course, publication of the expanded wage section, asking that employees not discuss wages among themselves, had not been the first time that Respondent sought to limit such discussions. Even before the ''INTERNAL MEMO'' to Remmel, the same subject had been raised during September, when Sondrol was escorted on a tour of Respondent's welding areas, as described in section I,B, supra. At that time, both Manager Vanderpool and Plant Manager Cloakey expressed to her the importance of not talking about her wages with any of Respondent's employees.

Based on Vanderpool's testimony, Respondent argues that those admonitions represented no more than an effort to minimize potential friction caused by the fact that Sondrol would be receiving a higher pay rate than the one ordinarily paid to new employees. Nevertheless, as discussed above, the Act does protect the right of employees to discuss among themselves the subject of comparative wages. That some receive more than others is hardly a statutorily countenanced basis for depriving employees of their right ''effectively to communicate with one another regarding self-organization at the jobsite.'' *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 491 (1978). The words of those two supervisors to Sondrol, impressing on her the need for her to refrain from discussing her wages with coworkers, at the very least ''put in doubt [her] right to engage in [discussions of wages] protected by the Act without fear of punishment by . . . her employer.'' *Albertson's Inc*., 307 NLRB 787, 788 fn. 6 (1992). Indeed, her apprehension would be but heightened in view of her position as, at that time, merely an applicant for employment at Paynesville.

It should not be overlooked that Sondrol's tour of Respondent's welding areas had occurred within a few days of the Union's September 7 letter. In it, Bertram had been identified as the sole organizing committee member. There is no evidence showing that, as of the day of Sondrol's tour, Respondent had been aware of the involvement of any other employee on behalf of the Union. As described in section I,A, supra, it had been Bertram who, during the preceding summer, had corresponded about his wage review with Webb. In consequence, by the time of Sondrol's tour, Respondent knew that wages were a sore subject with the lone employee then identified as the Union's supporter. Presumably, neither that employee, nor some of the others employed at Paynesville, would have been cheered to learn that she was to be paid in excess of the usual starting rate. Accordingly, general knowledge of her starting rate could increase the number of union supporters there. So far as the record shows, there would have been no other reason for Vanderpool and Cloakey's admonition to Sondrol. Yet, such a reason is hardly one which justifies curtailing employees' statutory right to discuss wages among themselves. Therefore, that admonition to Sondrol violated Section 8(a)(1) of the Act.

A like conclusion is warranted with regard to the circumstances of the ''VOTE NO'' T-shirt distribution. That subject is discussed in section I,F, supra. Respondent does not dispute the fact that it made the shirts available to its employees. Webb claimed that it had done so as a result of requests by ''a number of employees,'' but he never identified any of them. No employee appeared as a witness to corroborate Webb's testimony. Still, the Board has held that ''availability of procompany insignia, in the absence of supervisory involvement in the distribution process or other evidence that management pressured employees into making an observable choice or open acknowledgment concerning their campaign position, did not reasonably tend to interfere with employee rights under the Act.'' (Citations omitted.) *Schwartz Mfg. Co*., 289 NLRB 874, 879 (1989). Consequently, even without employee requests for prorespondent apparel, Respondent would not have violated the Act had it done no more than make T-shirts available to its employees. But, it did do more—did go two steps further in connection with them.

It is undisputed that Vanderpool offered ''VOTE NO'' T-shirts to employees as they were entering the front door—the only one they were supposed to use when entering Respondent's place of business. Further, he asked Sondrol if she wanted one, thereby tending to put her on the spot as to whether she would have to wear it and thereby demonstrate support for Respondent. When handing one to Bertram, Vanderpool said that Bertram would now be able to get rid of the Union's T-shirt. Consequently, there had been ''supervisory involvement in the distribution process'' of Respondent's T-shirts.

The second step, described in section I,F, supra, occurred when Webb became involved, after learning about Bertram's comment that he would wear the T-shirt in the barn. There perhaps might have been no violation of the Act had Webb's remarks to Bertram been confined to a use of the shirt which could be fairly characterized as deliberate destruction or abuse of it, such as taking one and immediately tearing it to shreds. But, Webb did not so confine his comments to Bertram. Instead, he demanded return of the shirt if Bertram was not going to wear it at Respondent's place of business.

Under the Act, an employer is not allowed to insist that employees wear antiunion—nor, for that matter, prounion—insignia. Webb's undisputed remark to Bertram—to return the shirt if Bertram was not ''going to wear it at the shop''—rose to the level of such insistence. Furthermore, that remark was reinforced by the ''Message Reply'' direction to return the shirt if Bertram ''wasn't going to use it the way it was intended to . . . be used[.]'' By memorializing that insistence in a written document which demands that the shirt be returned by a particular time, if Bertram did not intend to wear it at Respondent's place of business, Webb elevated his oral insistence to the level of implied threat. That is, though he did not explicitly threaten adverse consequences for failure to wear or return the shirt, memorialization of the demand that Bertram do so, on a form ordinarily utilized by Respondent for messages, would create a natural apprehension by an employee that noncompliance would result in adverse consequences. Therefore, both Vanderpool's involvement in distribution of the T-shirts, and Webb's demands of Bertram regarding the shirt which the latter had accepted, violated Section 8(a)(1) of the Act. A contrary result is warranted, however, with regard to the allegations concerning distribution of union literature.

As discussed in *Indian Hills Care Center*, 321 NLRB 144 (1996), workplace literature distribution during reasonable times and in nonwork areas is protected by Section 7 of the

Act. However, an employer can seek to limit it where necessary to maintain production or discipline. No evidence was presented to contradict Cloakey's testimony, described in section I,E, supra, that on receiving literature distributed during breaks, employees ''were standing around talking about'' its contents, rather than returning to work. That is, it is undisputed that literature distribution during breaks had been resulting in interference with production, even though there is no evidence that the literature distributors had intended such a result.

Cloakey took no action, nevertheless, to prohibit absolutely the distribution of union literature during breaks. Rather, he proposed a compromise to Kessler, asking that the union supporters defer their literature distribution until shift's end, in return for which Respondent also would do so. In making that proposal, Kessler admitted, Cloakey said explicitly that he could not force Kessler to agree to it. This exchange hardly constitutes an instruction, much less a threat, that the Union's literature not be distributed during breaks.

To be sure, Respondent displayed antagonism toward the Union and its employee advocates on other occasions. Nonetheless, there is no evidence that Cloakey's proposal regarding no breaktime literature distribution had been generated, or likely would have been perceived by an employee listener such as Kessler, by any motive other than concern about getting production restarted following breaks. That is a legitimate concern under the Act. And the proposal to defer literature distribution until shift's end, rather than continuing it during breaks, is tailored to eliminate the production-related concern which had arisen, while seemingly allowing the employees to continue to disseminate the Union's literature to coworkers. In these circumstances, I conclude that Respondent did not violate the Act by proposing that union literature not be distributed during breaks, but be conducted at the end of the workday.

As it turned out, that proposed compromise proved unworkable to the Union's supporters, as described in section I,O, supra, and they resumed breaktime literature distribution. However, there is no evidence that Kessler, or any other member of the Union's organizing committee, informed Cloakey or any other official of Respondent, specifically Edward Webb, of the reason for that resumption. So far as the record discloses, nothing was said subsequently to any of the Union's literature distributors about doing so until Webb happened on Bertram distributing literature during a break in late November, after Kessler had ceased working for Respondent.

The complaint alleges that, on that occasion, Webb threatened that employees could not pass out Union literature during breaks. But, as described in section I,O, supra, that is not what actually happened. Webb did ask if Bertram was aware of Kessler and Cloakey's agreement. That question is an indication that Webb's true concern had not been with preventing distribution of union literature, as such, but with the no-breaktime literature-distribution agreement and the reason underlying it. Moreover, while Webb did attempt to embellish his initial description of what Bertram had said—only to later retreat from his portrayal of Bertram in an unfavorable light—the fact remains that after Bertram explained that the Kessler-Cloakey agreement had not worked out, Webb walked away. So far as the record discloses, the subject of distribution of literature during breaks never again surfaced.

Of course, Bertram testified that, as he had been walking away, Webb had said ''something of the sort'' about ''we'll be talking again'' if Bertram continued distributing literature during breaks. Yet, as discussed in subsection I, below, Bertram was not always a reliable witness. Beyond that, he displayed no certainty—''something of the sort''—as to what Webb had actually said as the latter walked away. Even if Webb truly had said, ''[W]e'll be talking again,'' that remark is ambiguous. It does not rise to the level of an overt threat of discipline or other retaliation.

Perhaps Webb's remark, as described by Bertram, could be construed by an employee as an implied threat. But, it also reasonably could be construed as a statement of intention to try working out some different type of agreement, to replace the unworkable Kessler-Cloakey one. It also could be construed as no more than grumbling by Webb, on learning for the first time that the Kessler-Cloakey agreement had proven unworkable. In any event, notwithstanding Respondent's other unfair labor practices, the evidence does not suffice to establish that, whatever remark had been made by him, Webb had made a statement that could be construed by an employee as a threat.

Therefore, I conclude that a preponderance of the credible evidence does not establish that Respondent either unlawfully instructed an employee to not hand out union literature during breaks, or that it unlawfully threatened that an employee could not pass out union literature during breaks.

### C. *Bonuses, Awards, and Gift Certificates*

As stated in section I,D, supra, at a company picnic of Respondent's employees on September 27, 10-year service plaques and $1000 bonuses were awarded to certain employees. Respondent had never awarded either plaques or cash bonuses to employees for length of service. Given that fact and, further, the timing of these awards in relation to Behr's letters, the General Counsel argues that the bonuses had been awarded as a benefit, to dissuade employees from supporting the Union by demonstrating its ability, without a bargaining agent, to confer improvements in terms and conditions of employment.

Further supporting that allegation, is the fact that, by the time of the picnic, only three of those six employees—Loretta Christman, Marge Mohr, and JoAnne Welle—had worked for Respondent for 10 years. Indeed, Christman and Mohr had worked for it well over 10 years by September 27. Of the other employees who received 10-year plaques at the picnic, two—Don Rooney and Elly Mohr—would not complete 10 years of service for Respondent until 1996. The sixth employee—Myron Koenig—had worked for Respondent only since January 1991.

Although the foregoing facts would appear to support the General Counsel's allegation regarding the bonuses, certain other facts point to a contrary conclusion. Webb testified that he had made the decision to honor employees with 10-year or close to 10-year service plaques during late July. In fact, Respondent presented correspondence dated August 25—before there is any evidence that Respondent knew about the Union's campaign and, as noted in section I,A, supra, before any of Respondent's employees even had contacted the Union—between Controller Svejkovsky and West Central Trophies, arranging for 10-year service plaques for

Christman, Koenig, Marge Mohr, Welle, Rooney, and Elly Mohr.

As set forth above, the latter two employees would not complete then years of service with Respondent until early 1996. However, Webb testified that, by July and August, Rooney and Elly Mohr ''were within a few months of ten years' service'' and he decided to include them. That may seem a somewhat unusual approach and, given Webb's general unreliability as a witness, might tend to undermine Respondent's defense. After all, length of service awards are usually given after the stated service periods have been completed, not in anticipation of them. Still, Svejkovsky's August correspondence with West Coast Trophies—listing all of the above-named six employees—removes whatever doubt may otherwise arise as a result of Webb's general unreliability.

Although neither Koenig nor Rooney actually had worked for 10 years for Respondent by September 27, before beginning work there they had worked for Wet Jet, another company owned by Edward Webb. He testified that ''it was people that worked for *me* ten years or longer'' (emphasis added) whom Respondent intended to honor. Again, the late August documentation supports that testimony and, conversely, refutes any argument that the list of employees to be honored had been cobbled together in response to the September notice of the Union's organizing campaign.

Of course, the foregoing evidence pertains only to honoring 10-year employees with plaques. It does not cover the three $1000 bonuses awarded during the picnic. Although the record is not a model of clarity regarding that subject, it would appear that neither Rooney nor Elly Mohr received a $1000 bonus on September 27. For, Respondent's documentation, discussed in the next paragraph, shows that only $4000 had been budgeted for 10-year bonuses and neither Rooney nor Elly Mohr had completed 10 years of service by that date. Seemingly, Respondent was willing to award each a plaque in anticipation of completing 10 years of service, but not to award either of them the cash bonus which accompanied the plaques received by the four employees who actually had completed 10 years of service for Webb.

Svejkovsky provided documentation to support his testimony—which appeared to be candid—that, for the four $1000 bonuses, he had booked a $4000 journal entry on August 2, almost a month before his correspondence with West Central Trophies and, thus, even further removed from commencement of union activity at Respondent and notice by Behr to it about the Union's campaign. That documentation, along with Svejkovsky's seemingly candid testimony dooms any allegation that the bonuses had been conceived as a response to notice of the Union's organizing campaign.

Left for consideration is the timing of the bonus awards: within 3 weeks of Behr's first letter to Webb. According to his August 25 memorandum to Edward and Kathleen Webb, Svejkovsky anticipated a ''lead time [of] approximately seven (7) days including the engraving'' for receipt of the plaques. Svejkovsky placed that order with West Central Trophies on that same date. By invoice dated September 8, West Central Trophies billed Respondent for the six plaques and Webb wrote a check for them on September 15.

By then, of course, Webb had received Behr's notice of the organizing campaign. Still, that notice did not oblige Respondent to abandon its 10 years' awards plan. For, it is settled that, even during a preelection period, an employer may announce benefit improvements which have become concretized as a result of an already initiated and ongoing process. *NLRB v. Tommy's Spanish Foods*, 463 F.2d 116, 119 (9th Cir. 1972); *Southbridge Sheet Metal Works*, 158 NLRB 819 (1966), affd. 380 F.2d 851 (1st Cir. 1967).

As to the almost 2-week period that lapsed between the dates of his check for the plaques and the picnic, Webb explained that ''[w]e had to contact the person that we had lined up to cook the meal . . . it took a little time to get the plaques in-house and arranged so that this person could . . . get off from work to come over during the middle of the day to cook the lunch we had, and so it took a few days to get it lined up.'' On its face, that is not an illogical explanation. There is no evidence contradicting or tending to contradict it. Moreover, inasmuch as the plaques had been transmitted by invoice dated 1 day after Behr's first letter, it hardly seems significant, for analytical purposes, whether the picnic had been held 1 day, 1 week, or 2 weeks after receipt of Behr's letter. In light of the foregoing considerations, I credit Webb's denial that the bonuses had been awarded in response to notice to him of the Union's campaign and, further, conclude that a preponderance of the credible evidence does not support the allegation that the bonuses had been awarded to discourage support for the Union. But, what about the amounts of prizes and gift certificates awarded to other employees during the same picnic?

As set forth in section I,D, supra, there had been past drawings for gift certificates and prizes. However, whereas those drawings had been $5-gift certificates and, as Webb phrased it, ''little stuff,'' the September 27 drawings had been for gift certificates, as he also put it, ''in the $10 area,'' and for prizes varying ''from $5 to $20.'' In other words, higher amounts were involved on September 27 than in the past. Respondent never explained its reason(s) for having increased those amounts in the wake of receipt of Behr's correspondence. The absence of such an explanation for so abrupt an increase naturally would lead employees to connect those increases to the recently revealed organizing campaign. Indeed, that impression would be reinforced by Respondent's October 5 and 6 expressed opposition to unionization of its employees and by its unfair labor practices discussed in preceding and succeeding subsections.

To be sure, the certificates and prizes had been, in effect, gifts to recipient employees. Nevertheless, Webb acknowledged that periodic awards to employees of certificates and prizes had been an ongoing benefit periodically awarded to employees at company sponsored events. Even if they had not risen to the status of terms and conditions of employment, within the meaning of Section 8(d) of the Act, see *NLRB v. Wonder State Mfg. Co*., 344 F.2d 210, 213 (8th Cir. 1965), one can hardly dispute that an employer's one-time payments to employees, for the purpose of inducing those employees to oppose representation, would be regarded as interference with unfettered exercise of statutory rights. That is, such payments would not be evaluated in terms of Section 8(d) of the Act.

Of course, the amount of any individual gift certificate or prize had been relatively small, viewed from an objective perspective. Still, an employer's misconduct ''is not to be measured in economic terms alone.'' *American Oil Co. v. NLRB*, 602 F.2d 184, 187 (8th Cir. 1979). Even individually

small monetary amounts serve to demonstrate to employees their employer's power over all its employees' economic destinies. Furthermore, even small scale violations of the Act, at least those which exceed de minimis, require the Board's attention. *St. Regis Paper Co*., 192 NLRB 661, 662 (1971).

The increases might be regard as de minimis had they occurred in a vacuum. Yet, as concluded in preceding and subsequent subsections, they did not occur in a context free of other unfair labor practices. Consequently, their relatively small amounts do not serve as a basis for dismissing the allegation pertaining to them. Therefore, in the totality of the above-discussed circumstances, and especially given the absence of an explanation for the seemingly abrupt increase in their amounts, I conclude that by increasing the amounts of gift certificates and prizes awarded on September 27, Respondent interfered with the exercise of Section 7 rights and violated Section 8(a)(1) of the Act.

D. *Discharge of, or Refusal to Hire, Tamara Sondrol*

As pointed out in section I,H, supra, the General Counsel alleges alternatively that, on October 6, Respondent discharged, or refused to implement its firm plan to hire, Tamara Sondrol. The discharge alternative is based on an alleged joint employer relationship between Respondent and The Work Connection with regard to Sondrol during the time that she had been working at Respondent's Paynesville place of business. Given its control over essential aspects of her employment during the 3 weeks that Sondrol work there, it is difficult to conclude that, from September 18 through October 6, Respondent had not been a joint employer of Sondrol. That is, a preponderance of the evidence demonstrates that Respondent had codetermined essential terms and conditions of Sondrol's employment at its Paynesville place of business. That being so, there is ample basis for concluding that it had discharged her on October 6.

Still, the more precise description of what had occurred on that date is that Respondent refused to allow her to continue working there, pursuant to its contract with The Work Connection, until it implemented its firm plan to hire her as robotic welder operator. However characterized, the evidence is clear that Respondent did terminate Sondrol's continued employment at Paynesville. Indeed, Respondent concedes as much.

The crucial issue is not whether Respondent severed its relationship with Sondrol, but its motivation for having done so. I conclude that a preponderance of the credible evidence establishes that Respondent's motivation had been its belief or suspicion that Sondrol was sympathetic to the Union and likely would become a supporter of the Union were she to be allowed to continue working at Paynesville and be hired as Respondent's robotic welder operator.

Of course, suspicion or belief that an employee is a union sympathizer is as unlawful a motivation as actual knowledge that she supports a union. ''[T]he Act is violated if an employer acts against the employee[] in the belief that [she has] engaged in protected activities[.]'' *Henning & Cheadle, Inc. v. NLRB*, 522 F.2d 1050, 1052 (7th Cir. 1975). Accord: *NLRB v. Ritchie Mfg. Co*., 354 F.2d 90, 98 (8th Cir. 1965). More specifically, belief that a job applicant may become a union supporter is equally unlawful as a motive for refusing to hire her. See, e.g., *Polynesian Cultural Center v. NLRB*, 582 F.2d 467, 469, 474 (9th Cir. 1978); *Big E's Foodland*, 242 F.2d 963, 968 (1978).

As discussed in section I,B, supra, Sondrol had begun working at Paynesville, because Respondent sought someone to operate the robotic welder which it had purchased and, according to Vanderpool, ''didn't have [a] person'' qualified to operate. That testimony should not be overlooked, since there is no evidence that Respondent had been in any different situation on October 6, when Vanderpool informed The Work Connection that Respondent no longer desired Sondrol's services.

Essentially, Sondrol had been working on a probationary basis at Respondent. It had been evaluating her work while it was arranging for a time when she could be dispatched to Ohio for robotic training needed to understand and to operate the newly purchased welder. So far as the record shows, neither Vanderpool nor any other official of Respondent had any complaints about the welding work which she performed from September 18 to October 6. Further, while it did not occur as soon as Respondent would have preferred, eventually a slot for robotic welding school did open in Ohio. But, during the afternoon of October 6 Respondent abruptly reversed field.

As stated in section I,B, supra, Vanderpool testified that Respondent wanted someone who was willing to make a relatively long-term commitment to operate the robotic welder ''and so didn't necessarily want somebody to come and go to the training and then leave the plant.'' Vanderpool's testimony concerning that preference is not contested. To the contrary, both Terri Karolus of The Work Connection and Sondrol, herself, confirmed that Respondent sought someone willing to make such a commitment to continued employment with Respondent.

According to Vanderpool, he had spoken periodically with Sondrol while she was working at Respondent, but her responses about her job showed no more than, as he put it, ''Questionable satisfaction.'' During that same period, he testified further, he had spoken with Karolus about Sondrol's attitude and Karolus had said that she could not say that Sondrol would continue working for Respondent for a long period.

In fact, Karolus—who, when she testified, obviously was disposed to Sondrol's position—acknowledged that she had told Vanderpool that Sondrol had been ''evasive'' on the point of long-term employment with Respondent and, in addition, that she had agreed with Vanderpool that maybe Sondrol did not want to stay with Respondent for a long period. Moreover, during conversations conducted while Sondrol was working at Respondent, Karolus testified that Sondrol had said that she was not thrilled about working there, because she was doing the same thing over and over, and that she did not want to continue doing the work which she was being assigned because it subjected her to physical strain.

As a result of those conversations, Karolus testified that she did not have a good feeling about Sondrol's long-term prospects at Respondent. Still, it should be kept in focus that, once she was trained to operate the robotic welder, Sondrol would be performing duties different from the ones that Respondent had been assigning to her as, in effect, fill-in welding work—work that she could perform until schooled in Ohio.

As pointed out in section I,H, supra, Vanderpool placed three telephone calls to The Work Connection on October 6, the first of which had been at 12:26 p.m. The first call lasted 11-1/2 minutes. During it, testified Vanderpool, he had first spoken with The Work Connection's officer manager, Sheila Martinek, and then with Karolus. He expressed his nervousness about Sondrol's unwillingness to make ''the commitment that I was interested in,'' Vanderpool testified, and Karolus replied that she ''didn't really have a reading for me to tell me over the phone at that time,'' saying that she would have to talk to Martinek about it.

According to Vanderpool, responding to a message to call her, he later telephoned Karolus who said, ''[W]e kind of have somewhat the same feeling they [sic] do, we are not getting that reading of extreme satisfaction'' and ''[C]an't tell you that we think . . . she's going to stay for a long time[.]'' Further discussion, as described by Vanderpool, left the situation no less ambiguous and, he testified, he said, ''Well, I'll call you back.'' Later that afternoon, Vanderpool testified, he did call Karolus and, during that conversation, said that ''I think I have to stop this'' and that Sondrol's services no longer would be needed by Respondent. Vanderpool denied having perceived Sondrol as a union supporter and testified that his sole reason for not allowing her to continue working at Paynesville, and hiring her, had been her ambiguous attitude about continuing to work at Respondent.

Vanderpool's denial that he had perceived Sondrol to be a union supporter encountered heavy going during cross-examination. For, at the bottom of the first page of Sondrol's ''PERSONAL RESUME,'' faxed to him by The Work Connection, Vanderpool admitted that he had handwritten and then scratched over, ''some time after I received it I would assume,'' the word ''UNION.'' He advanced no explanation of his own for having written that word on Sondrol's resume, although he readily adopted an explanation, suggested during redirect examination, that he had a habit of writing or doodling on pieces of paper.

Of course, that is a somewhat strange word to write on someone's resume. Vanderpool equivocated somewhat when asked directly if the notation disclosed that he had believed Sondrol to be prounion: ''I don't *believe* it has anything to do with that, other than I would have written on the piece of paper from some conversation *maybe* I had *or something*.'' (Emphasis added.) Asked next if the notation would necessarily have been related to Sondrol, Vanderpool responded, ''*Very likely* not. It's *not necessarily* related to that.'' (Emphasis added.) Yet, at no point did he deny categorically that the notation ''UNION'' had pertained to Sondrol. Furthermore, at no point did Vanderpool advance any particularized explanation whatsoever as to how he had come to write, and then scratch out, that word on Sondrol's resume.

The evidence provides a basis for Vanderpool to have come to suspect that Sondrol was disposed to be sympathetic toward the Union and, should she be added to Respondent's payroll and included in the bargaining unit, that she likely would become a union supporter and vote in favor of representation, should an election eventually be conducted. Thus, when he offered her one of the ''VOTE NO'' T-shirts, as described in section I,F, supra, Sondrol asked Vanderpool if she had to wear it. That hardly is a question that would be asked by someone not sympathetic toward the Union. Though she accepted a shirt from him, there is no evidence that she ever wore it while working at Respondent over the course of succeeding days.

Her failure to wear the T-shirt likely would not have escaped Respondent's notice. As described in subsection B, above, it had been Bertram's unwillingness to wear the shirt which he had accepted which caused Webb to demand it return. It is a fair inference that Respondent did not overlook others who accepted, but did not wear, Respondent's $15 T-shirts. Failure to wear one of the shirts, after having accepted it from Vanderpool, would be some indication to Respondent of the recipient's lack of sympathy with Respondent's position respecting representation of its employees.

Sondrol also asked to attend one of the group meetings conducted by the Webbs. To be sure, in making that request and in her questions during the meeting which she attended, she never said explicitly that she supported the Union and its organizing campaign. Still, her questions and comments during that meeting, described in section I,H, supra, hardly can be characterized as favorable to Respondent. After all, a question about possible retaliation, against an employee who brings a concern to her/his employer's attention, hardly displays confidence in the fairness of that employer. Nor does it display an attitude of indifference toward the need for employees to secure some protection against such an employer. Moreover, a question regarding denial of a raise to an employee, because of equipment failure hardly demonstrates belief in the fairness with which employees are treated. Those types of questions would more likely lead an employer to suspect that the employee was unsympathetic, than sympathetic, to the argument that its employees did not need a collective-bargaining agent to protect their interests.

As set forth in preceding subsections, Respondent had not been reluctant to resort to unfair labor practices to deter its employees from supporting the Union. By October 6 it had not made a final commitment to hire Sondrol. The decision not to do so was made abruptly. It also was made shortly after the group meeting which she had attended and during which she posed the above-described questions to the Webbs. The word ''UNION'' had been written on Sondrol's resume and, then, had been scratched out. The totality of these circumstances give rise to a fair inference that Respondent, particularly Vanderpool, did suspect her of being a potential union supporter.

That inference, and a conclusion that she had been hustled away from Respondent's place of business because of her potential support for the Union, are reinforced by one undisputed remark made by Vanderpool to Karolus on October 6. During a telephone conversation with Vanderpool on that date, Karolus testified, he had said that Sondrol ''had got [sic] mixed in with the wrong group of people'' or ''was mixed in with the wrong group of people,'' and, further, ''that she now had a bad attitude'' or ''that Tammy's attitude had changed.'' While he challenged other aspects of Karolus's testimony—time of day of his telephone conversation with her, length of the call during which he said that Respondent no longer desired Sondrol's services—Vanderpool never contested her testimony that he had made those remarks to Karolus about Sondrol.

To be sure, when testifying, Karolus appeared to favor Sondrol's position. Moreover, it is clear that she had not

been accurate when she testified that her telephone conversation with Vanderpool had occurred during the morning and had lasted ''an hour to two hours.'' Respondent's telephone records effectively contradict both assertions. Yet, in the final analysis, neither aspect of her testimony is so central as to demonstrate that none of Karolus's testimony is reliable. Indeed, if the call had occurred during the morning, as she testified, the timing could undermine any conclusion based on Sondrol's questions during the Webbs' 9:10 a.m. group meeting on October 6—that is, such testimony tends to undermine, rather than further, Sondrol's position. Furthermore, it is not the length of the telephone conversation between Vanderpool and Karolus which is critical. Rather, it is the substance of the words spoken during that conversation. In sum, at worst it appeared that Karolus had been mistaken about the time of day when she spoke with Vanderpool and the length of the conversation during which he said that Sondrol should no longer report to Respondent. But, neither mistake serves to render inherently unreliable the words of Vanderpool, which he never disputed having spoken to Karolus, regarding Sondrol's ''attitude'' and her having become ''mixed in with the wrong group of people.''

Respondent presented no evidence that, during early October, there had been some, what Respondent regarded as, ''the wrong group of people,'' other than the Union, at its place of business with whom Sondrol had become involved. Accordingly, it is a fair inference that, in making that statement to Karolus, Vanderpool had been referring to employees supporting the Union. Not only do Vanderpool's undenied statements to Karolus reinforce the conclusion that Respondent suspected Sondrol of being a likely potential union supporter, should Respondent continue with its plan to hire her, but the above-quoted statements constitute virtually an admission that Vanderpool, the official who claims to have made the decision concerning Sondrol, had decided not to put her on Respondent's payroll because of his concern about increasing the number of unit supporters for the Union.

A careful examination of the evidence underlying Respondent's defense to its refusal to hire Sondrol reveals that, as an objective matter, that defense is unreliable. There can be no dispute about the fact that Respondent had been seeking a long-term employment commitment from Sondrol and, moreover, that she had not made one as of October 6. Still, Vanderpool testified to only one occasion when he had specifically ''asked Tammy directly about long term,'' and on that occasion, he admitted, Sondrol ''just said, for a number of years.'' Surely, that response is some indication of Sondrol's intention to remain working for Respondent for more than a brief period. And, Vanderpool admitted that the commitment he had been seeking had been ''for a year or two, that would have got us on our feet with the robotic welder and we could have done really well.'' In sum, on the only occasion when Vanderpool spoke directly to Sondrol about remaining as an employee of Respondent, so far as the evidence discloses, she had given him a response which should have satisfied the limited commitment which he testified that he had been seeking.

In all other respects, Vanderpool claimed that he had relied on his ''feelings'' or ''reading'' of Sondrol's answers to his more general questions, such as ''how things were going'' and, ''How do you like what you're doing[?]'' Of course, when those questions were being asked, Sondrol had not been working on the robotic welder; she had been performing, in effect, fill-in welding until dispatched to robot school. Indeed, Vanderpool conceded that he understood that Sondrol would not be pleased with performing that fill-in work. For, he testified that he had explained to her that ''the robot wasn't there [at] that time, that she needed to work on some welding and I said I realize these booths really aren't where you want to be, but it gives us an opportunity to see how you do according to some standards, it's a good gauge for us.'' Yet, having acknowledged that Sondrol had been doing welding work other than the type which she had been hired to eventually perform, and having told her he knew that ''these booths really aren't where you want to be,'' Vanderpool never explained how, when he had asked how nonrobot welding work was going and how Sondrol liked what she was doing, he had concluded that her ''[q]uestionable satisfaction'' responses could be extrapolated to reflect what her attitude would be when she eventually got to perform the robot work which she had been hired to perform.

When employees are disciplined for asserted misconduct, one objective factor evaluated in analysis is employer willingness to advise that employee of the asserted misconduct and to offer her/him an opportunity to defend herself/himself. Unwillingness to do so tends to show lack of true interest in whether the misconduct actually had occurred. See *Handicabs, Inc*., 318 NLRB 890, 897 (1995), and cases cited therein. The situation here is analogous.

Despite admittedly having been told at one point by Sondrol that she planned to remain employed ''for a number of years'' at Respondent as a robotic welder, the position which Respondent intended her to occupy, Vanderpool claimed that her equivocal responses to his questions about satisfaction with other nonrobot work led him to doubt her willingness to remain as a robotic welder. But, he never claimed, and Respondent presented no other evidence, that he ever again had asked explicitly if Sondrol intended to remain employed by Respondent once she completed the schooling and began performing robotic welding. His failure to do so, especially in light of her earlier satisfactory response to that specific question, tends to show a lack of true interest in whether or not Sondrol intended to remain with Respondent once she began operating the robot. Further, his effort to seize on answers to his questions about work which he conceded that she did not want to perform, and then to transport those answers to robot welding, tends to demonstrate that Vanderpool was attempting to create a pretext for not following through on Respondent's plan to hire Sondrol as its robotic welder.

One other factor tends to confirm a conclusion that Respondent's true motive for not allowing Sondrol to continue working at Paynesville had been an unlawful one. As pointed out above, during September Vanderpool had concluded that Respondent ''didn't have that person'' then employed who could qualify for assignment to the robotic welder. Then, as described in section I,B, supra, Vanderpool selected one of those very same employees—Ron Masters—to send to school in Ohio, after deciding not to hire Sondrol. He had been one of the very employees whom Respondent had regarded 1 month earlier as not qualified for assignment to the robotic welder. There is no evidence that he had done anything while Sondrol had been working at Paynesville that

would warrant a conclusion that he was qualified in October, when he had not been in September. Nevertheless, Respondent abruptly rushed him into the breach created by Sondrol's departure.

In sum, the considerations set forth at the first part of this subsection provide ample evidence that suspected potential union sympathy motivated Respondent's refusal to continue with its plan to hire Sondrol. The burden of showing that she would not have been hired in the ordinary course of events, despite her display of potential union support, *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), was undertaken on Respondent's behalf by Vanderpool. I do not credit his explanation. Therefore, I conclude that a preponderance of the credible evidence establishes that Respondent violated Section 8(a)(3) and (1) of the Act by failing to follow through on its plan hire Tamara Sondrol.

### E. *Disciplinary Reports Issued for Employee Misconduct*

A series of allegedly unlawfully motivated disciplinary notices were issued by Respondent to its employees: to Bertram on September 20, along with a transfer from resleeving to the wear bar department's induction welding machine, and on September 27, as described in section I,C, supra; to Kessler on October 3, as described in section I,E, supra; to Bertram and Remmel on October 16, as well as an additional ''INTERNAL MEMO'' to Remmel on that same date, as described in section I,I, supra; and, to Bertram and Kessler on November 7, as described in section I,K, supra. While the notices issued to Bertram on September 20 and 27, and the ''INTERNAL MEMO'' issued to Remmel on October 16, were related to job performance, the other notices were for asserted misconduct and it is the motivation for those notices which is analyzed in this subsection.

As set forth in section I,E, supra, Kessler received an employee disciplinary report on October 3, as a result of his admitted luncheon remarks to repairman Kuney about Webb purportedly hiding money. In making that remark to Kuney, it is undisputed that Kessler said that he had heard about that hidden money during one of the Union's meetings. Consequently, he was repeating to Kuney no more than what had been said during the organizing campaign. There is no evidence that Kessler ever made an accusation of his own that Webb had engaged in any financial impropriety.

Respondent contends that Kessler's remarks to Kumey were beyond the protection of the Act, because those remarks tended to undermine ''that cooperation, continuity of service and cordial contractual relation between employer and employee that is born of loyalty to their common enterprise.'' (Footnote omitted.) *NLRB v. Electrical Workers Local 1229 IBEW (Jefferson Standard)*, 346 U.S. 464, 472 (1953). Yet, the situation presented in that case differed from Kessler's remark to a single person about what had been said during a union meeting.

The employees in *Jefferson Standard* had ''sponsored or distributed 5000 handbills making a public, disparaging attack upon the qualify of the company's product and its business policies, in a manner reasonably calculated to harm the company's reputation and reduce its income.'' (Supra, 346 U.S. at 471.) In contrast, there is no evidence that Kessler had engaged in any form of broad-based public dissemination of what he had heard from the Union about Webb. That is, he repeated what he had heard only once and, then, to a single person during a private luncheon. The remark which he repeated did not pertain to Respondent's product or business reputation. Kuney was a vendor or supplier of Respondent, not a customer. There is no evidence that he was a position to affect Respondent's income in any fashion. Moreover, there is no evidence that Kessler sought to have Kuney disseminate what was being said, nor that Kessler could fairly have anticipated that Kuney would have done so. In these circumstances, the *Jefferson Standard* doctrine is inapplicable and there is no basis for concluding that Kessler had been engaging in activity which placed him outside of the Act.

Beyond that, as set forth in section I,E, supra, Webb admitted not only that he had been told on October 3 by Kessler that it had been ''the [U]nion [which] had said'' that Webb was hiding money, but that Kessler also ''agreed that he wouldn't'' repeat those union-originated remarks about Webb. That is, Kessler effectively apologized for having repeated the Union's accusation to Kuney and promised to never do so again. Nonetheless, Webb testified that he had said, ''I had to give [Kessler] a warning for'' having done so. At no point did Webb explain why, in the light of the apology and promise, he ''had to give him a warning for that.''

There is no evidence that, in the past, Kessler ever had made any type of negative comment about Respondent or Edward Webb to an outsider. Webb did not claim that he disbelieved Kessler's promise not to again repeat the Union's accusation. The fact that Webb issued an employee disciplinary report to Kessler in these circumstances tends to show that Webb's actual concern had been not with preventing what he regarded as employee misconduct, but instead with utilizing any possible misstep by a union supporter as a basis for issuing disciplinary reports that could eventually be used against identified union supporters. That inference is strengthened by the circumstances leading to other disciplinary reports discussed below and in the succeeding subsection.

Furthermore, Kessler had been one of the employees identified by Behr, in his September 15 letter, as being ''on the Organizing Committee[.]'' As such, Respondent could fairly anticipate that Kessler would be communicating with coworkers in an effort to garner support for the Union. Obviously, one type of communication which employee-organizers naturally would be making to other employees involved criticisms of existing terms and conditions of employment provided by Respondent. If—as Webb stated in the October 3 disciplinary report—critical remarks by Kessler would be ''CONSIDER[ED]'' by Webb to be ''DEFAMATORY,'' then, according to that Report, Kessler would be subjected to ''FUTURE DISCIPLINE.'' As a result, the October 3 disciplinary report had an inherent chilling effect on Kessler's statutorily protected activity. To be sure, the disciplinary report arose as a result of Kessler's remark to someone not employed by Respondent. Still, the warning which it contains is so broadly worded that an employee likely would be concerned that any criticism of Respondent to any person, employee or nonemployee, would be ''considered'' by Webb as defamatory and, accordingly, a possible basis for future discipline.

In sum, Kessler's repetition to a single outsider of a remark made by the Union during one of its organizing meetings with Respondent's employees was not outside the scope of the Act's protection. It led Respondent to issue an employee disciplinary report to Kessler, even though he informed Edward Webb that he was repeating what he had been told by the Union, not making an accusation on his own, and promised not to do so again. In view of that promise, Respondent provided no explanation as to why it had been necessary to issue a disciplinary report to Kessler. Not only did that disciplinary report serve as a means for building a record against Kessler for possible future discipline, but its admonition about future discipline was so broadly worded that it inherently infringed on Kessler's ability to engage in organizing activities protected by Section 7 of the Act.

At the time of issuing the disciplinary report, Respondent knew that Kessler was one of the Union's leading proponents. As concluded in preceding and subsequent subsections, Respondent engaged in unfair labor practices as a means of retaliating against the Union's supporters and as a means of discouraging support for the Union among its employees. In the totality of the circumstances, it is a fair inference that the October 3 employee disciplinary report was issued to Kessler as a means of furthering those unlawful objectives. Therefore, I conclude that a preponderance of the credible evidence establishes that the disciplinary report issued to Kessler had been unlawfully motivated and, consequently, violated Section 8(a)(3) and (1) of the Act.

The employee disciplinary reports issued to Bertram and Remmel on October 16 also were based on conduct in which both employees had engaged, though Remmel denied that he had used a door other than the front one to enter and exit during nonworktime. Moreover, Bertram and Remmel were not the only employees who received disciplinary reports on October 16 for that infraction. As set forth in section I,I, supra, Greg Ranthum also had receive an employee disciplinary report that day for the same offense as Bertram and Remmel: using a door other than the front one to enter or leave Respondent's building. Within the next 10 days three other employees each received disciplinary reports for that same offense.

As to the comparative substance of all those disciplinary reports, five, including the ones issued to Bertram and Remmel, listed as offenses, ''Failure to follow instructions'' and ''Violation of Company Rules.'' Only the latter was checked on the disciplinary report issued to Brenda Lang on October 25. Yet, so far as the record reveals, omission of ''Failure to follow instructions'' on her disciplinary report was no more than an oversight. In any event, there is no basis for concluding that the omission had some significance in evaluating the actual motive for the ones issued to Bertram and Remmel.

Similarly, in the ''Supervisor's Remarks'' portion of the form, no inference adverse to Respondent can be drawn from the sentence, appearing in the disciplinary report issued to Bertram, ''IF HE DOES THIS AGAIN HE WILL BE DISMISSED.'' For, substantially the identical warning—''NEXT OFFENSE OF THIS WILL MEAN DISMISSAL''—appears on Lang's disciplinary report. However, there is no evidence that she had been viewed as being a union supporter. Conversely, Remmel, like Bertram an identified supporter of the Union, received an employee disciplinary report which makes no mention of consequences for future violation of the front-door only rule.

As pointed out in sections I,C, and I,I, supra, the rule against using other than the front door, to enter and exit when coming to and leaving work, and during lunches and breaks, had been a longstanding one. Employees had been notified of its existence during 1991 and, again, during 1993. Shipping and Receiving Department Head Marge Mohr testified, without contradiction, that concern about employees taking product had existed since the mid-1980s. According to her, one possible method for doing so had been use of a side door to take parts from the building. Those parts would be placed outside the side door and, at night, the taker(s) would return and pick them up from the outside location where they had been placed.

As to republication of the rule on September 22—which, it should be remembered, is not alleged to have violated the Act—Webb, Cloakey, and Marge Mohr each testified that the latter had discovered and reported product, which should have been stored elsewhere, stacked by the warehouse door. In addition, Mohr testified that during August one employee had reported that another employee was selling studs to people in the area. A review of Respondent's records disclosed no purchases from Respondent of those studs by that employee. From those facts, Respondent concluded that the employee was taking the studs. As a result, the front-door only rule was republished to try to channel employees in and out one door, so that they could be more carefully watched to ascertain if any was removing product. The General Counsel does not challenge the logic of that policy.

Cloakey was involved in all of the above-enumerated employee disciplinary reports for use of other than the front door. He issued those disciplinary reports to Bertram, Ranthum, Oliver, Andrews, and Lang. He served as ''witness'' for the one issued to Remmel by the latter's supervisor, Vanderpool. That was not illogical, since Cloakey testified that he had been the one who had seen ''Allan go in and out the side door by the dyno room in R & D.''

As described in section I,I, supra, Bertram conceded that he had existed and re-entered a side door on October 16 to check on damage to his vehicle cause by having struck a deer on his way to work that morning. Remmel, in contrast, advanced what appeared to be a tailored denial of having violated the rule. In so doing, he demonstrated objectively that his testimony was not always reliable.

Remmel denied having used any door other than the front one when he had arrived for work on October 16 and when leaving or returning from breaks that day. He further testified that when given the disciplinary report, he had said to Vanderpool ''that I had gone out and in the front door for my break[.]'' All well and good—except that the ''Supervisor's Remark'' on Remmel's disciplinary report (G.C. Exh. 28) begins: ''I am told that you departed from R & D at *Lunch time* without going through the front door. I understand that you went into [sic] the shipping door.'' (Emphasis added.) At no point did Remmel deny with particularity having used a door other than the front one on October 16 to leave for lunch.

To be sure, it might be argued that lunch is a break period and that Remmel's general denial regarding breaks had been intended to encompass his lunch period that day. Still, as he testified, Remmel appeared to be a very precise person who

would not resort to generalities whenever he intended to be specific. Moreover, as quoted above, the employee disciplinary report which he had been handed on October 16 stated expressly ''Lunch time'' and I doubt, had he used the front door to go to lunch that day, that he would have utilized the more general term ''break'' in protesting to Vanderpool. Certainly, there is no basis for speculating that Vanderpool would, or should, have understood ''break'' to mean ''Lunch time,'' as specified in the disciplinary report.

Remmel's sometime unreliability was further demonstrated when he testified, with regard to which door other than the front one he had been accused of going out, ''They didn't specify, and I don't remember.'' A rereading of the above-quoted ''Supervisor's Remarks'' portion of his disciplinary report, however, shows that Vanderpool had specified ''the shipping door'' as the one through which Remmel had departed ''at Lunch time.'' In light of the foregoing considerations, I conclude that a preponderance of the credible evidence does support Respondent's position that both Bertram and Remmel had violated the ''front-door only'' rule on October 16.

Still, that does not conclude evaluation of this allegation. The rule had been a longstanding one at Respondent. Both Bertram and Marge Mohr testified that it had been violated regularly. Indeed, the latter testified that it had been because ''too many people weren't following it again, they were using the side doors'' that Respondent had republished the rule on September 22. Nevertheless, Respondent never contended that it ever had issued, or ever had contemplated issuing, employee disciplinary reports prior to September 22 for violation of the ''front-door only'' rule. Further, nothing in its September 22 republication indicated an intention to start issuing disciplinary reports for nonobservance of the rule. Nor did Mohr, Cloakey, Vanderpool, or any other official, testify to an intention to do so at the time of rule's September 22 republication.

By October 16, of course, Respondent knew about the Union's organizing campaign. It knew that Remmel and, especially, Bertram were leading proponents of the Union. It opposed representation of its employees by the Union and, as concluded in preceding subsections, had been willing to resort to unlawful conduct to retaliate against the Union's supporters and to discourage selection of the Union as its employees' bargaining agent. Most specifically, as concluded above, an employee disciplinary report had been the vehicle for retaliating against, and for beginning to construct a record against, Kessler because of his union support.

Respondent never explained its seemingly abrupt reversal on October 16 of not issuing disciplinary reports for use of doors other than the front one. Two of the first three employees to whom disciplinary reports were issued, for violating the rule, were members of the Union's organizing committee. Obviously, Respondent could not issue disciplinary reports to them without issuing a like report to Ranthum and, later, to other employees who subsequently violated the rule. Possibly the General Counsel could have alleged that those other employee disciplinary reports were also unlawfully motivated, because issued to conceal and justify an unlawful motive for issuance of like reports to Bertram and Remmel. That the General Counsel chose not to do so does not somehow constitute a waiver of his statutory obligation to proceed on the disciplinary reports which were issued to the Union's supporters. Indeed, issuance of disciplinary reports to a few employees not shown to have been union sympathizers does not automatically preclude a finding of discrimination against employees who do support a union. *Alliance Rubber Co*., 286 NLRB 645, 647 (1987); *Frank Letz Honda*, 321 NLRB 482 fn. 5 (1996).

In sum, there is no evidence that Respondent had contemplated issuing, or ever had issued, employee disciplinary reports to any employees who violated its ''front-door only'' policy prior to the advent of the Union's organizing campaign. Respondent supplied no explanation whatsoever for having abruptly decided to do so following notice that an organizing campaign was in progress. Two of the initial three employees who received disciplinary reports for violating the rule were identified union activists. Respondent opposed unionization of its employees and engaged in unfair labor practices to retaliate against union supporters and to discourage support for the Union. By issuing disciplinary reports to Bertram and Remmel on October 16, Respondent was able to begin in the case of Remmel, and to continue in the case of Bertram, as discussed in the succeeding subsection, laying a paper trail against them as the basis for possible future, more severe, disciplinary action. Therefore, I conclude that a preponderance of the credible evidence establishes that, in issuing employee disciplinary reports to Bertram and Remmel on October 16, Respondent had been unlawfully motivated and violated Section 8(a)(3) and (1) of the Act.

Events leading to issuance on November 7 of employee disciplinary reports to Bertram and Kessler are set forth in section I,K, supra. They were issued for unauthorized use of Respondent's telephone to make personal calls and, in fact, both employees had done so. Nonetheless, they were issued to two of the Union's organizing committee members against a background of other unfair labor practices, including issuance of disciplinary reports on prior occasions in retaliation for the union sympathies and activities of, as well as to build a record against, some of the Union's leading proponents. In the totality of the circumstances, I conclude that those same motives led Respondent to issue the November 7 disciplinary reports to Bertram and Kessler.

To be sure, Respondent has a written policy which prohibits unauthorized personal calls, just as it has a written policy against use of doors other than the front one for entering and leaving its building. In contrast to that latter policy, however, it is undisputed that it had audited employees' calls and had disciplined employees for making unauthorized ones. For example, on March 1, 1994, employee Geralyn Rychman had been fired for excessive personal telephone calls.

Furthermore, Bertram admitted having called Behr on November 6, without having first obtained permission to do so, and Kessler admitted having made a number of personal call, also, for the most part, without first securing permission to place them. Still, the foregoing circumstances are not so conclusive of Respondent's motivation on November 7 as Respondent contends.

The rule which Bertram violated prohibited altogether, ''Personal phone calls . . . during working hours without prior arrangements.'' It had been Bertram whom Kathleen Webb and Cloakey had observed, on November 6, engaging in a telephone conversation while in the machine shop office. Unlike Kessler, Bertram had no code number assigned to him for placing business-related telephone calls. Accordingly,

regardless of whom Bertram had called that day, he had violated Respondent's above-quoted policy, at least if he had placed that call ''without prior arrangements.'' Yet, there is no evidence that Respondent's officials—Kathleen Webb and Cloakey—made the least effort to ascertain if some supervisor other than Cloakey had authorized Bertram's call. Instead, Respondent went to the not insignificant trouble of attempting to ascertain to whom Bertram had been speaking—a seemingly irrelevant consideration, if none of its supervisors had authorized him to make the call.

Respondent argues that the effort to locate the identity of the other party had constituted no more than a legitimate investigation. However, at no point during their sometimes inconsistent, and other time internally contradictory, explanations, about the effort to check on the identity of that party, did Respondent's officials truly claim that this effort had been made to investigate whether there had been a violation of the rule against unauthorized telephone calls. Indeed, the inconsistencies between their accounts, as well as the internal contradictions in the testimony of Edward Webb, serve only to fortify the conclusion that, during the hearing, Respondent's officials were attempting to construct a defense that could be construed as legitimate, rather than testifying truthfully concerning the motivation for having issued the employee disciplinary record to Bertram on November 7.

That conclusion is further supported by Controller Svejkovsky's failure to corroborate Edward Webb's testimony that Svejkovsky had participated in the effort to ascertain with whom Bertram had been speaking on the telephone and, moreover, by the absence of corroboration by Kathleen Webb of her husband's testimony about her participation in the events leading to issuance of the disciplinary report to Bertram. Their failure to corroborate Edward Webb's testimony concerning them gives rise to a fair inference that, had they been asked about the events of November 6 and 7, they would not have corroborated Edward Webb's testimony.

The fact that Respondent made a not insignificant effort to ascertain the identity of the party with whom Bertram had been speaking, instead of trying to determine whether some supervisor other than Cloakey had authorized Bertram's November 6 call, is an indication that its true concern about the call had been with the identity of that party, and less with the fact that Bertram might have made an unauthorized call. That effort gives rise to a further inference that the true reason for disciplining Bertram had been the identity of the party whom Bertram had called, rather than his failure to obtain authorization to place the call. The fact that Respondent undertook the effort to ascertain the identity of that party, rather than trying to find out if some supervisor other than Cloakey had authorized Bertram to place the call, tends to undermine the argument that Respondent would have disciplined Bertram for having made a unauthorized call, regardless of to whom it had been placed. After all, it hardly makes sense to undertake an investigation of the identity of that party unless that party's identity is significant in deciding whether or not to discipline the employee.

Of course, the November 7 addition of an employee disciplinary report to Bertram's personnel file made it possible for Respondent to further buttress its position in future, more severe, disciplinary action against Bertram, should an opportunity arise. He had been the first union supporter whose identity had been revealed by Behr. Respondent opposed the Union and engaged in unfair labor practices to undermine support for it. Furthermore, a conclusion of unlawful motivation for Bertram's disciplinary report is supported further by analysis of the parallel disciplinary action taken against Kessler on that same date.

He had worked for Respondent since February, approximately 9 months by November 7. Although there was dispute between Kessler and Cloakey concerning the numbers of personal calls which the latter had authorized the former to make during the early period of Kessler's employment, it is undisputed that Kessler had made a number of personal calls without securing prior authorization. Still, though Respondent had audited employees in the past, there is no evidence that it had made any effort to audit Kessler's telephone calls until November 6, when he was discovered in the same office where Bertram was speaking on the telephone with, as Respondent discovered, the Union's vice president. Yet, Kessler had not been participating in a telephone conversation at that time. And there is no evidence that any of Respondent's officials had observed Kessler participating in any telephone conversation on November 6. Nevertheless, Respondent undertook an audit of his personal telephone calls in the immediate wake of discovering him in the office with Bertram.

As set forth in section I,K, supra, Cloakey claimed that he had initiated the sequence of events leading to investigation of Kessler's telephone calls, by having asked Kathleen Webb if ''it was possible to get all the phone records off [Kessler's] calling number,'' because he had assertedly observed Kessler ''on the phone quite a bit[.]'' She replied that it was possible to do so, testified Cloakey, and he obtained those records and conducted his investigation of the telephone calls placed by Kessler. At no point did Cloakey mention any involvement by Edward Webb in the events which supposedly had led to that investigation.

Yet, Edward Webb testified that, in effect, he had initiated the investigation of Kessler's telephone calls, when his wife ''came to me with the phone records[.]'' Of course, it is possible that after Cloakey had spoken to her about Kessler's telephone calls, Kathleen Webb had brought those records to her husband. Still, that is sheer speculation, since she never testified regarding what had occurred on November 6 and 7. As a result, the record is left with inconsistent explanations by Respondent's witnesses as to the events which triggered investigation of Kessler's personal telephone calls.

That was not the lone inconsistency with regard to that investigation. As quoted in section I,K, supra, Edward Webb testified during direct examination that he had requested his wife ''to ask Bob to go through the records and check the phones.'' Of course, that account is consistent with Cloakey's testimony that he had been the official who had checked out Kessler's calls. But, during cross-examination, Edward Webb testified that it had been his wife who had checked Kessler's phone records. Again, it is possible that Cloakey reviewed the Kessler's phone call records and reported his findings to Kathleen Webb who, in turn, related those findings to her husband. Again, however, to reach such a conclusion would be to speculate—by patching together isolated scraps of testimony—as to what had occurred. For, there is no testimony to that effect by Kathleen Webb. ''The employer alone is responsible for its conduct and it alone bears the burden of explaining the motivation for its actions.'' *Inland Steel Co.*, 257 NLRB 65 (1981).

Given Kessler's disclosed role as a member of the Union's organizing committee, Respondent's hostility toward organization of its employees, its willingness to try preventing that by engaging in unfair labor practices, and its above-concluded willingness to utilize employee disciplinary records as one means for retaliating against union sympathizers and for building records against them, it is a fair conclusion that, with respect to the November 7 employee disciplinary record, Kessler had been a target of opportunity for Respondent. That is, he was discovered in the same office at the same time as Bertram was talking by telephone, Respondent later discovered, with Behr. Its phone records turned out to provide a basis for disciplining Kessler, as well as Bertram.

Any contention that Respondent truly had been concerned about Kessler's unauthorized telephone calls, as opposed to seeking a pretext to discipline him, is obliterated by one undisputed fact: Respondent made no effort to collect from Kessler the cost of personal calls made by him, even though Kessler offered to pay for them and totaled the costs of the personal calls which he had made. Given the accusations leveled against him, in the employee disciplinary report and during the meeting in which he received that disciplinary report, it would appear to be logical that, once the cost of those calls had been totaled, Respondent would have sought to collect from Kessler. But, though he submitted his total to Kathleen Webb and asked her to ''add the tax and stuff in,'' to arrive at a figure for which he then would write a check, she never got back to Kessler so that he could do so. Her failure to do so is unexplained.

As pointed out in subsection D, above, an employer's failure to offer an alleged discriminatee the opportunity to defend himself/herself against an accusation of misconduct is some evidence of lack of true interest in whether the misconduct actually had occurred. Similarly, Respondent's disinterest in collecting the cost of the calls, which it had characterized, inter alia, as ''Theft (Stealing)'' by Kessler, is a strong indication that Respondent had not been truly interested with the cost of those calls. Rather, that disinterest tends to show that Respondent's actual interest in the calls was elsewhere. Of course, the only other alternative interest, so far as the record shows, had been Respondent's antagonism toward the Union and its supporters. The evidence reveals no other reason for Respondent to have pursued making a record of Kessler's unauthorized personal telephone calls, but to have ignored the opportunity to recover their cost. In the totality of the circumstances set forth, above, I conclude that a preponderance of the credible evidence establishes that Respondent was unlawfully motivated in issuing the employee disciplinary records to both Bertram and Kessler on November 7 and, therefore, that issuance of those disciplinary records violated Section 8(a)(3) and (1) of the Act.

### F. *Warnings and Notices Related to Job Performance and Transfer of Bertram*

As set forth in section I,C, supra, Bertram had been transferred to resleeving in the machine shop during early 1995. Without belaboring the matter, resleeving, in the context of Respondent's operations, involves aluminum cylinders used mostly in snowmoblies, though some have been used for motorcycles. Inserted in the cylinder when new is a sleeve which usually is chrome, but sometimes is cast iron. The point at which Respondent became involved was whenever a cylinder seized or something broke, causing damage, and requiring installation of a new sleeve.

Sleeves are made from special cylinders which Respondent received in lengths somewhat longer than 2 feet. Those were cut into four or five pieces, each of which became a sleeve. Each sleeve was placed on a computer-operated CNC lathe, or SL3, to bore out the inside and, as well, the top and bottom. The sleeve next went to an indexer which turned it so that holes, or ports, could be cut in the sleeve. It was then ready for insertion into a cylinder.

As to the cylinder to be resleeved, the original chrome or cast iron sleeve was bored out of it, to make way for the new sleeve. Next, the cylinder was heated to cause expansion. The newly fabricated sleeve was frozen to cause it to contract. That process allowed the new frozen sleeve to be inserted readily into the heated cylinder, with ports in each aligned. After that, the sleeve would expand while it warmed and the cylinder would contract as it cooled. Ideally, a pressed fit would result.

The sleeve's inside would be further bored out so that it would accommodate whatever the customer intended to put in it. Ports were chamfered to clear the ridges around the now-mated ports. Afterward, cross-hatches were put on the cylinder by means of a honing machine, so that the engine would break in properly. If either the boring or honing was performed incorrectly, the piston rings installed on the cylinder might not seat. If a cylinder's inside were bored to excess, leaving too much clearance between it and the sleeve, an entire engine could be ruined. In consequence, it is not disputed that ability to measure—to make accurate measurements—is an essential aspect of a resleeving operator's job. This serves as background for discussion of Bertram's resleeving work in the machine shop during 1995.

Prior to his transfer to resleeving during early 1995, Bertram's work in the wear bar department had been satisfactory. However, he encountered difficulty in performing resleeving work. ''We got a series of problems, actually a fair number of them, generally having to do with motoring the size of our bore,'' testified Vanderpool, because ''the size of the hole that he made, unfortunately most of the time it wasn't too small, it was generally always too big.'' That testimony was uncontradicted. Doug Monson, general manager for recreational engineering—a customer of Respondent which is also owned by Edward Webb—testified that ''probably starting February, March'' he began encountering a variety of problems ''with resleeving work performed by Respondent'' some pertaining to chamfering, others involving incorrect bore sizes, and still others concerning deck height on sleeves. ''Little things like that,'' he testified, ''Mostly pertaining to machine work.''

On February 17, Cloakey submitted a payroll change notice for Bertram, stating that there had been improvement in the latter's attitude and performance since his transfer to the machine shop, that he ''CARES AND APPRECIATES MORE ABOUT WHAT HE IS DOING,'' keeps his work area clean, no longer has to be told constantly what to do and to quit talking, and had become quite dependable. Yet, below that description, Kathleen Webb had written, inter alia, that she had trouble with granting a pay raise to an employee when Monson ''HAS TO SPEND 2 HOURS ON THE CYLS [Bertram] DOES.'' In the margin next to his wife's

comment, Edward Webb had written, ''NOT HIS FAULT'' and ''POOR TRAINING.'' In short, whatever problems were encountered initially by Bertram in resleeving, Edward Webb appeared willing to discount.

In fact, Vanderpool testified that by March customer claims ceased to be filed on work performed by Bertram: ''We had a few problems there that continued, but more slight, it didn't seem like it was a big thing.'' During March Bertram was trained on a machine which Respondent had purchased and Kessler helped adjust any programming problems, according to Vanderpool. Still, not all aspects of Bertram's work were regarded favorably.

During June, he was given a 25-cent-an-hour raise, apparently the one about which he complained to Edward Webb, as described in section I,A, supra. While Cloakey's comments leading to that raise were largely favorable, he did point out that Bertram needed ''A LITTLE PUSH'' with respect to cleanliness and ambition, needed to learn that the workday ended at 3:30 rather than 3:15 p.m., and deserved a raise only because he had learned to operate other machines: ''HE NEEDS TO PROVE HIMSELF FOR AT LEAST SIX MONTHS.'' Although no concerns were expressed about then retaining Bertram in resleeving, Edward Webb wrote on this document, ''I THINK HE NEEDS TO BE REVIEWED IN 30 DAYS & 60, AND IF HE HAS NOT IMPROVED CONSIDERABLY WE NEED TO LOOK FOR SOMEONE ELSE FOR SLEEVES, ECT. [sic].'' Accordingly while Cloakey and Vanderpool were not then considering transferring Bertram from resleeving, Edward Webb certainly was doing so, even before having received Behr's September 7 letter.

Vanderpool testified that, during August, Bertram overbored the inside of a customer's cylinder, with the result that the sleeve fit loosely: ''you don't want it to come loose when the engine is running or we are going to buy [the customer] a whole engine,'' because the customer's engine had been ruined as a result of the loose sleeve. On August 25, Machine Shop Supervisor Donovan Whitcomb, Bertram's immediate supervisor, prepared a review which made highly favorable remarks in six categories. With respect to the category of quality, however, Whitcomb wrote: ''I think Bill is doing A good job here Also. There has beeN somE scrap, but I don't Think *much of iT* can be contributed [sic] directly to operator Error.'' The obvious inference is that some of it could be attributed to operator error.

Cloakey, 5 days' later, prepared his review, agreeing with Whitcomb's evaluation of the six above-mentioned areas. As to quality, however, Cloakey wrote, ''THERE HAS BEEN SOME BAD PARTS BUT I DON'T KNOW IF IT'S HIS FAULT.'' Beside that comment, when he reviewed Cloakey's, in effect, 60-day review, Edward Webb wrote and circled, ''FIND OUT.'' All of the foregoing events, of course, occurred before any notice to Respondent, so far as the record discloses, of union activity by Bertram. Collectively, they show that Respondent was not enchanted with Bertram's performance prior to September. Certain events during that month naturally served to heighten Respondent's disenchantment with that performance.

During September, Vanderpool testified, Bertram improperly performed three resleeving jobs. He left a gap between part of the cylinder and sleeve on a mono block for recreational engineering. It rejected the supposedly resleeved cylinder. He over-bored the sleeve of a single cylinder on another recreational engineering cylinder. It also was returned to Respondent. Finally, testified Vanderpool, on September 19 Bertram over-bored a cylinder for Josuda Corporation. That was discovered before the cylinder was shipped to Josuda. The latter two mistakes involved errors of measurement which Vanderpool regarded as inexcusable, because ''you need to creep on the measurements, if you are looking at a half a thousands and it's easier to creep up on it and make it larger than it is to go too far and make it smaller, it's kind of a common sense thing.''

Cloakey prepared and signed the September 20 employee disciplinary report, apparently at Vanderpool's direction. For, asked about the reason for having issued it to Bertram, Cloakey testified, ''Bruce had talked to me about it and I believe, it was—had something to do with measuring,'' specifically, ''quality and . . . inability to measure.'' Asked the same question, Vanderpool testified that the two cylinders mentioned in the disciplinary report had referred to the mono block and the single cylinder for recreational engineering. Thus, testified Vanderpool, the employee disciplinary report had been issued to Bertram because:

> I felt that for the amount of time that I was in Ed's office and my exposure to this was whenever there was a problem, like I said, called number 12, I could just as well forget going back to work for a couple of hours because we would be in there trying to teach Bill how to measure, it had gone away and now why did it reoccur. We hadn't had a problem and here all of a sudden, we got two of them right in a row. One happened to be non-boring issue. Very, very obvious the other one is a bore. If it hadn't been so basic, such as chamfering a part, at maybe just a hair at different angle or whatever, I probably wouldn't [have] issued a warning notice for that, because that is very, maybe a little more technical.

Bertram never disputed the occurrence of the foregoing four problems beginning in August. He blamed the boring problems on the lathe he had been using. He claimed that he had not been trained properly to perform resleeving. Of course, Edward Webb acknowledged during February, as set forth above, the inadequate training received by Bertram. Still, the latter did not dispute having been trained to operate the new machine. Nor did he contest having foregone an opportunity to participate in training at a school, though he excused having foregone doing so because of a conflict. In the final analysis, however, the major difficulty in his excuses is that by June—and, surely, by August—Bertram had been gaining experience resleeving. That experience seemingly should have compensated for any initial inadequacy in training. Indeed, it is undisputed that from March to August there had been no major deficiency in his resleeving work, although Edward Webb appeared not to have been satisfied totally with its quality, as shown by his above-quoted comments on Bertram's performance review.

As with Respondent's officials, Bertram was not always a credible witness. In the circumstances set forth above, his excuses for resleeving mistakes were not always advanced with candor. And they do not withstand scrutiny. I conclude that Respondent has shown that it had not been altogether satis-

fied with Bertram's resleeving performance even before he became involved with the Union. His August and September performance only reinforced that dissatisfaction. Nevertheless, that does not terminate evaluation of Respondent's motivation for having issued an employee disciplinary report to Bertram on September 20.

Before addressing that ultimate issue, however, it is necessary to evaluate a parallel sequence of events unfolding as Bertram was working in the machine shop. As described in section I,C, supra, Vanderpool had been exploring the possibility of, in effect, subcontracting resleeving work. When it became apparent that Bertram continued to encounter measuring problems, testified Vanderpool, ''we didn't have any time for training somebody new'' and, so—in a September 18 memo to Webb, Cloakey, and Donovan Whitcomb—he proposed to Webb that Respondent discontinue its own resleeving operation and allow Robert Pjelver to perform the work. As to Bertram, Vanderpool stated in that memo that his ''troubleE on the sleeves . . . doesn't make him a bad worker[,] probably just in the wrong position,'' and that Bertram could be transferred to a vacancy then-existing in Respondent's fiberglass operation, possibly with a raise of 25-cents per hour.

Of course, as pointed out in section I,C, supra, Bertram was unwilling to work in the fiberglass plant. As described above, on September 19 Respondent discovered that he had over-bored the Josuda cylinder. In a memo to Webb, Cloakey, and Donovan Whitcomb of that same date, an obviously exasperated Vanderpool recited the Josuda error, pointed out that the cost of errors in the fiberglass operation would be higher than in the machine shop, and recommended that Bertram be fired. Obviously, acceptance of that recommendation would have allowed Respondent to eliminate what it had to have perceived, from Behr's September 7 letter, as the Union's foremost supporter. Respondent refrained from taking that step, however.

Instead, as set forth in section I,C, supra, at a meeting on September 20 Bertram was given the employee disciplinary report, for the two recreational engineering cylinders, was told that he could not work in the machine shop if he could not measure, and was informed that he was being transferred back to the induction welding machine in the wear bar department where there was a vacancy for operator. The General Counsel alleges that transfer as being unlawfully motivated. However, evaluation of the facts underlying that allegation, as well as the circumstances of Bertram's transfer, warrant a conclusion that a preponderance of the credible evidence shows that Respondent would have transferred Bertram from resleeving even had the Union not appeared on the scene.

First, the above-described records, predating advent of the Union's campaign, confirm Respondent's witnesses' testimony that Bertram's resleeving performance had not been satisfactory to them. Bertram's excuses for his problems rang hollow. He did not dispute that, during August and September, he had improperly performed work on the recreational engineering and Josuda cylinders.

Second, there is no evidence contradicting that presented by Respondent regarding Bertram's inability to measure and, moreover, that ability to measure properly was necessary for every job in the machine shop. To be sure, while working there resleeving, Bertram had filled in on other machine shop jobs and, apparently, had not encountered difficulty measuring. Still, there is no evidence that such fill-in work would have kept Bertram occupied on a full-time basis. Nor is there evidence that Respondent had need of a permanent fill-in employee for its machine shop. Certainly, there is no evidence that Respondent ever had employed anyone as a full-time fill-in machine shop employee. ''The burden of establishing every element of a violation under the Act is on the General Counsel.'' *Western Tug & Barge Corp.*, 207 NLRB 163 fn. 1 (1973).

Third, while Bertram's freedom of movement throughout portions of Respondent's building may have been less working on the induction welding machine, than when resleeving, there is no basis for concluding that such a difference has analytical significance. For, there is no evidence that Bertram had engaged in statutorily protected activities while moving around the machine shop—that is in activity which could be curtailed by his transfer to the induction machine. Beyond that, there is no evidence admitting of even an inference that Respondent would somehow have appreciated that Bertram's movements would have been curtailed as a result of that transfer and, further, that Respondent had been motivated by such a concern in deciding to transfer Bertram from resleeving.

To the contrary, Bertram's employment on the induction machine had been concededly exemplary during the initial months of his employment at Respondent, before he had been transferred to the machine shop. If Respondent had been attempting to disadvantage Bertram in some way, by transferring him from resleeving to induction machine operator, it seems unlikely that it would have transferred him back to a position where, based on past performance, Bertram was likely to perform proficiently. In contrast to the disciplinary reports discussed in this and in the preceding subsection, there is no basis for concluding that a transfer back to the induction machine would operate to Respondent's antiunion advantage, by allowing it to continue building a record against Bertram for future, more severe, discipline. Indeed, if that had been Respondent's objective, it would have been better furthered by leaving Bertram to perform resleeving, relying on his undisputed inability to measure as a basis for future retaliation against him, including the termination which Vanderpool eventually recommended.

In sum, Bertram had been unable to master measuring which is a necessary aspect of resleeving, as well as of other machine shop work at Respondent. That problem had existed before Respondent had learned of his union activities and it had been a problem which concerned Respondent's officials. The problem was compounded by repetition of Bertram's mistakes during August and September, coupled with the onset of the snowmobile season when increased resleeving work could fair be anticipated. Even had Respondent not addressed the possibility of subcontracting resleeving operations, a preponderance of the credible evidence shows that transfer of Bertram from resleeving likely would have occurred by the latter part of September. The companion decision to subcontract most of that work to Pjelver merely adds to the inherent logic of Respondent's decision to transfer Bertram from resleeving. Furthermore, there is no basis for concluding that transferring him to the induction welding machine could be construed as so disadvantaging him, and his statutorily protected activities, that it could be concluded

that the transfer had been motivated by a desire to hard-time Bertram. In consequence, despite Respondent's antiunion attitude and its other unfair labor practices, a preponderance of the credible evidence fails to establish that the job transfer of Bertram had been unlawfully motivated.

Still, that conclusion does not dispose of the disciplinary report issued to Bertram on September 20, at the same time as the transfer. As Vanderpool pointed out in his September 18 memo, inability to measure simply had left Bertram ''in the wrong position.'' There is no contention that his measuring inadequacy had been somehow the result of deliberate unwillingness to learn how to measure, although Bertram could possibly have taken some action—such as schooling—to improve his ability to do so. Still, any improvement may only have been marginal. Their testimony and other evidence seems to show that Respondent's officials seemed to believe that Bertram simply would not be able to master the task of measuring correctly. Given that belief, the logical question is what motivated Respondent to issue an employee disciplinary report to Bertram at the same time as it was transferring him from resleeving.

Not only that, but unexplained was the decision to check such ''Nature of incident'' choices as ''Failure to follow instructions'' and ''Carelessness.'' In the circumstances, the act of having checked those infractions, which imply ability to perform a task but deliberate or inattentive failure to do so, tends to be a further indication that Respondent was attempting to tarnish Bertram's work record, rather than address the underlying problem which Vanderpool's September 18 memo identifies.

To be sure, as pointed out above, a reading of Vanderpool's September 18 memo discloses an obvious exasperation with Bertram's over-boring of the Josuda project. So exasperated was Vanderpool that he changed his transfer recommendation to termination of Bertram. Yet, Respondent concedes that the September 20 employee disciplinary report had not been based on the Josuda over-boring. Instead, Vanderpool identified the two earlier committed mono block and single cylinder projects as the ones referred to in the September 20 employee disciplinary report. If so, that also leaves unexplained Respondent's reason for having waited until September 20 to discipline Bertram for those two earlier-committed mistakes—ones which, two days before the disciplinary report was issued, Vanderpool had written ''doEsn't make him a bad workEr[.]''

Certainly, there is no basis for concluding that Respondent had intended the September 20 employee disciplinary report as a means of motivating Bertram to work more diligently after resuming induction machine work. In the first place, none of its officials claimed that any such purpose his been the motive for the disciplinary report. And, as an objective matter, there was no basis for a belief that Bertram would not adequately perform on the induction machine. After all, his prior work there had set the standard for that machine which Respondent subsequently imposed.

As it would turn out, Respondent began issuing disciplinary reports as a vehicle for retaliating against the Union's supporters and for discouraging union support. That was concluded in the preceding subsection. The one of September 20 appears to have been the first occurrence of that method of retaliation and discouragement. At that time, Bertram appeared, from Behr's September 7 letter, to be the leading union proponent. Respondent opposed unionization of its employees. It was not hesitant to resort to unfair labor practices to buttress that opposition. While Bertram had made mistakes previously when resleeving, no disciplinary reports had been issued to him until after disclosure of his union sympathies and activities. No explanation was advanced for so seemingly abrupt a decision to begin issuing them to him. Nor did Respondent explain why it had waited until September 20 to issue a disciplinary report to Bertram for mistakes made earlier during September—and at a time when Respondent had concluded that Bertram simply could not master measuring and, consequently, had decided to transfer him back to the induction machine. The totality of these circumstances warrants the conclusion that Respondent would not have issued the September 20 employee disciplinary report to Bertram absent disclosure of his union sympathies and activities. Therefore, its issuance violated Section 8(a)(3) and (1) of the Act.

A like conclusion is warranted with regard to the originally unsigned and undated ''Warning to Bill Bertram'' described in section I,C, supra, for having failed to produce to standard on the induction welding machine. There is no dispute that, during the period September 20 through 26, Bertram had failed to even approach the production standard for that machine. Also undisputed is the fact that the standard existing during September had been based on production demonstrated by Bertram when he had performed that same job in the wear bar department during 1994 and early 1995. Based on that past experience, it was not inherently illogical for Respondent to assume that Bertram would be able to produce to that standard after being transferred from resleeving on September 20. Indeed, records of September 27 through 29 show that he was able to do so. Nevertheless, a preponderance of the credible evidence establishes that the ''Warning'' had been issued for a purpose other than genuine concern about Bertram's September 20 through 26 production—to create a record against Bertram because of his union sympathy and activity.

A factor which most dramatically attracts attention is the difference between the September 27 ''Warning to Bill Bertram'' and other written discipline issued to employees, as described throughout section I, supra. In every other instances disclosed by the record, when Respondent issued written discipline to employees, employee disciplinary reports had been utilized. Respondent advanced no explanation for the abrupt change in the form of written discipline on September 27.

Beyond that, when the ''Warning'' had been issued to Bertram on September 27, it had been unsigned. Again, so far as the record reveals, some supervisor—Cloakey, Vanderpool, Edward Webb—uniformly had signed employee disciplinary reports when issued to employees. Either Vanderpool or Cloakey had prepared the ''Warning to Bill Bertram.'' Both testified as witnesses for Respondent. Neither explained the failure to have signed the ''Warning'' before it had been issued to Bertram.

A third distinction between it and other written discipline had been the absence on September 27 of any meeting between the issuing supervisor and the employee being disciplined. To be sure, as concluded in subsection A, above, Lenz had been a statutory supervisor. Yet, she had not prepared the ''Warning.'' She merely had been the messenger

for its delivery to Bertram. There is no evidence that she possessed any authority to modify or to withdraw the ''Warning.'' As a result, Bertram had no opportunity to explain his side of the situation to the supervisor who had prepared it. That should not be overlooked, since it tends to show that Respondent was not truly interested in the substance of the ''Warning,'' so much as it was interested in having a warning on file against Bertram.

In that respect, Respondent has not shown any evidence that Bertram had been engaging in a work slowdown following his transfer back to the induction machine. While not always a credible witness, Bertram's explanation for his substandard production during the first week back there—''need[ing] a few days to get back into the groove of things''—was not inherently illogical, given that it had been 6 months since he last had worked on the induction welding machine. Indeed, the ''Warning'' concedes as much: ''We do realize that he may need a day or so to reacquaint himself to the process.'' By merely having issued an anonymous ''Warning'' to Bertram, without Cloakey or Vanderpool meeting with Bertram, Respondent effectively denied Bertram an opportunity to explain his first week's substandard production—and, moreover, eliminated any possibility that such an explanation might lead to re-evaluation of the decision to issue the ''Warning'' to Bertram.

By September 27 Bertram had been known to Respondent as a leading, if not the foremost, union activist among Respondent's employees. As concluded in this and in preceding subsections, Respondent harbored hostility toward such employees, because it opposed unionization of its employees, and was willing to engage in unfair labor practices to reinforce that opposition. One specific means of doing so had been to issue employee disciplinary reports to build a record against union supporters. Indeed, in the September 27 ''Warning to Bill Bertram, there appears the sentence, ''We have moved Bill to this area after poor quality warnings were given at his previous job.'' (Emphasis added.) The use of the plural is significant, since, so far as the evidence discloses, only a single employee disciplinary report had been issued previously to Bertram—the unlawfully motivated one arising from his resleeving measuring mistakes. Yet, Respondent chose to utilize the plural and that choice was never explained by any official of Respondent. Absent such an explanation, and given the other circumstances, it is a fair inference that the plural had been chosen in an effort, through words, to buttress an adverse personnel record for Bertram. Therefore, in the totality of the circumstances, I conclude that Respondent had been unlawfully motivated in issuing the ''Warning to Bill Bertram''—that it would not have been issued absent his union sympathies and activities—and violated Section 8(a)(3) and (1) of the Act.

The final notice discussed in this subsection is the one issued on October 16 to Remmel, as described in section I,I, supra. It offered him ''a day off with pay to look for another job that meets your goals.'' As concluded in subsection B, that notice violated Section 8(a)(1) of the Act, because it effectively invited an employee to quit for having engaged in the statutorily protected activity of discussing wage dissatisfactions with persons, including other employees, other than supervisors, managers and co-owners. It also violated that section of the Act for another reason.

The notice had been signed by Vanderpool who claimed that Remmel had ''seemed to be unhappy'' and, further, that there had been ''a series of meetings'' during which he and Remmel had discussed the ''kind of things [Remmel] was so unhappy about.'' Vanderpool did not testify with particularity, however, concerning the dates and substance of those meetings. Nonetheless, asserted Vanderpool, it had been as a result of those meeting that he had offered Remmel a paid day off to look for another job. Inasmuch as Remmel ''was always wanting me to write everything down and document it,'' Vanderpool testified that he had prepared the October 16 notice so that Remmel would not think that ''we are not going to pay him'' for that day off. Yet, there is no evidence that Remmel had questioned Respondent's willingness to pay him for taking the day off. And Vanderpool's testimony about Remmel ''always wanted me to write everything down and document it'' was vague and unsupported by other evidence.

Remmel agreed that he had protested to Vanderpool about the number of different tasks that he was being required to perform. So far as the record shows, however, it had been Vanderpool who initially had suggested orally that Remmel look elsewhere for employment. In response to that oral suggestion, Remmel said that he ''would be interested'' in taking a paid day off to look elsewhere for work and mentioned having heard of a research and development opening at another employer, Willmer Manufacturing. When 2 or 3 days passed without Remmel having acted on the situation, testified Remmel, he received the October 16 notice. Several points about that notice are worth a second look.

First, it makes no mention whatsoever of Vanderpool's supposed prior conversations with Remmel. Instead, the notice states that it is being written because of reports to Vanderpool ''by other Koronis Parts employees[.]'' No explanation was advanced by Vanderpool for having omitted mention in the notice of the purported prior conversations, between himself and Remmel, which assertedly had led to it preparation.

Second, both in the notice and when testifying, Vanderpool referred to Remmel's alleged unhappiness—with his wages in the notice and, when testifying, in general. That alleged concern by Vanderpool about employee unhappiness is a not unfamiliar refrain. After all, it had been Sondrol's supposed appearance of lack of happiness with her work which, Vanderpool claimed, had gotten him rethinking about hiring her, as discussed in section I,H, supra. However, as concluded in subsection D, above, that supposed appearance of unhappiness had been no more than a pretext, intended to conceal Respondent's true, unlawful, motive for not allowing her to continue working at Paynesville and for not then hiring her. Utilization of a substantially similar generality—appearance of unhappiness—as an asserted reason for offering Remmel a paid day off to look for other work, tends also to show unlawful motivation.

Third, there is no showing that Respondent ever had awarded a seemingly unhappy employee a paid day off to look for work elsewhere. Vanderpool never explained why he had chosen to follow such a unique course in the case of Remmel.

Of course, Remmel had been one of the organizing committee members identified in Behr's September 15 letter, described in section I,A, supra. As concluded in preceding sub-

sections, Respondent harbored animus toward the Union and its employee supporters. It engaged in several unfair labor practices aimed at retaliating against those employee supporters and at discouraging support for the Union.

One of those unfair labor practices had been its decision not to hire Sondrol whom it believed to be a likely supporter of the Union. By doing so, Respondent not only avoided adding another union supporter to its employee complement, but it also eliminated another vote for the Union in any representation election which might be conducted at its place of business. Essentially, persuading Remmel to quit would serve a similar purpose. Not only would it reduce by one the number of votes for the Union in any representation election, but it also would eliminate the ongoing presence at Paynesville of one union supporter, should Remmel be able to locate alternative employment and quit working for Respondent.

I do not credit Vanderpool's explanation for having issued the October 16 notice to Remmel. In the totality of the circumstances enumerated above, I conclude that a preponderance of the credible evidence establishes that it had been a uniquely formulated effort to persuade Remmel to quit because of his union and protected concerted activities. Therefore, its issuance to him violated Section 8(a)(1) of the Act.

### G. *Termination of Allan Remmel*

Allan Remmel was terminated by Respondent little more than a month after it had unlawfully attempted to persuade him to quit because of his support for the Union. That effort, occurring the context of other unfair labor practices—some of which had been directed specifically against Remmel—discussed in preceding subsections, provides a seemingly ample basis for concluding that Remmel's discharge had violated the Act. Yet, certain other factors serve to establish that, notwithstanding Remmel's support for the Union's campaign and Respondent's hostility toward the Union's supporters, he would have been terminated in late November had the Union never appeared on the scene.

Remmel had begun working for Respondent, doing research and development work, during March 1994. Prior to that, he had been working with Respondent, on a consultant-like basis, to develop a front-end suspension prototype. Once he began working for Respondent, his work in research and development largely had been devoted to suspension systems. In November 1994 he signed the ''CLUTCH DEPARTMENT JOB DESCRIPTION,'' the text of which is quoted in section I,N, supra.

At the time of signing it on November 25, 1994, it appears to have been contemplated by Remmel and Edward Webb that, though he would be working primarily with clutches, Remmel would continue performing research and development in other areas, as well. For, item 3 of the job description states that ''[y]our involvement in R and D projects will be directed by Ed [Webb] or Larry [Miller].''

As it turned out, clutch department work did not occupy all of Remmel's worktime. His then-immediate supervisor, Bruce Vanderpool, testified that ''most of the work of applications and all of that was over and everything seemed to be pretty good for season, we had some extra time, and so I put Allan on some other jobs.'' Similarly, Edward Webb testified that ''maybe six months into the [JOB DESCRIPTION] . . . Bruce had told me that Allan said that he had completed everything in the clutch department and so Bruce was then directed to find some other projects [for Remmel] to do until the one year contract was up,'' inasmuch as Respondent ''had to pay him anyway[.]'' Still, there is no basis for concluding that such other work had been regarded by Respondent as other than, in effect, fill-in work, as been the fact with Bertram's nonresleeving machine shop work, discussed in subsection F, above. That is, that such other work had been subordinate to Remmel's primary job in the clutch department and that if clutch department work had increased, such other work would have to be set aside or performed by someone other than Remmel.

According to Webb, ''[S]ome of the projects [assigned to Remmel] were maintenance, fixtures, stud gun as Allan had mentioned, the stud welding area, that was a new area.'' Neither Webb nor Vanderpool disputed Remmel's estimate of having spent ''roughly 25 percent'' of his time on all aspects of clutch production, while spending 75 percent of his time working on projects other than clutches. That had been the situation, so far as the record discloses, as of November 22, when he was discharged.

To establish that Remmel would have been terminated on that date, regardless of any union support and activity by him, Respondent addressed both the clutch and nonclutch aspects of Remmel's work. As to the clutch work, Edward Webb, the official who made the decision to terminate Remmel, pointed to the ''CLUTCH DEPARTEMENT JOB DESCRIPTION,'' formulated and executed with Remmel almost a year before any union activity had been initiated. Though there was confusion in Respondent's evidence as to the exact number of clutches manufactured from November 1994 to November 1995, it is uncontested that the number produced during that 1-year period had been well below that job description's minimum of 475, much less the target of 650. Respondent's testimony was that it had been understood, when the job description had been signed, that if its stated minimum were not achieved, clutch work would be largely discontinued and Remmel would be out of a job.

The General Counsel points out, however, that nowhere in the job description is it stated that the clutch manager's position will be discontinued if either the minimum or target goal for 1994–1995 is not achieved. Rather, the job description states only that the ''clutch department is being studied for 1 year to monitor success and will be evaluated 1 year from now.'' In other words, termination of Remmel was by no means so certain under the wording of the job description as Respondent now seeks to portray.

As pointed out in section I,G, supra, Edward Webb testified that, when the job description had been signed, he had alerted Remmel that ''if the minimum wasn't met, there wouldn't be a position for Allan.'' If so, of course, then Remmel's termination had been consistent with that notice to Remmel, notwithstanding its omission from the job description and, further, notwithstanding the intervening advent of the Union's campaign. Remmel claimed that he never had been told what the outcome would be if the stated clutch minimum and goals were not achieved. But, while Edward Webb was not ordinarily a credible witness, Remmel appeared not always to be testifying candidly. And in this area, Remmel gave testimony which tends to support what Webb testified that he had said to Remmel on November 25, 1994.

Remmel testified that, during a conversation with Vanderpool, he had said that ''if my job depended on the

clutch production that they were forecasting I didn't think I could produce it and they might as well fire me then.'' That would be an odd remark for an employee to make, out of the blue, if nothing truly had been said to that employee about continuation of his job being contingent on attainment of goals forecast by his employer. After all, one's job is not ordinarily contingent on such forecasts. And Remmel provided no explanation as to why he would have made such remarks—about his job being dependent on production and about being fired if the forecast could not be achieved—had he not been put on notice that he would be fired if the clutch production forecast was not achieved.

To be sure, Remmel also testified that, in response to his remark, Vanderpool had opined that Remmel's employment was not dependent on clutch department work. However, having observed him as he testified, I doubt very much that Vanderpool would have made such a statement—would have contradicted Webb's stated position on the consequences of failure to achieve stated production levels. Even if Vanderpool had made that statement to Remmel, his remark is at best the opinion of a supervisor who hardly was in a position to overrule Respondent's co-owner. As to what had been said during November 1994, Remmel's own account of his remark to Vanderpool shows that Remmel understood, before the Union appeared on the scene, that he was to be ''fire[d]'' if the stated minimum clutch production was not attained for 1994–1995.

It is accurate, and conceded, that Respondent continued performing clutch production after Remmel's termination. But, it is undisputed that the amount of such work was limited. Cloakey testified that slide department employee Melissa Buer had been performing it for but ''one to two hours a week'' only. He further testified that, to allow her to perform that work, it had not been necessary to increase her number of weekly work hours. There is no contention, nor evidence to support one had it been made, that Remmel should have been retained during November, with Buer being the employee terminated. In fact, there is no evidence that Remmel had been qualified to perform slide department work. Thus, the fact that, since Remmel's termination, she had been performing a limited amount of clutch production, on a fill-in basis, does not, of itself, undermine Respondent's contention that it had lawfully terminated Remmel. But, it does raise another consideration.

As pointed out above, by the time of his termination, Remmel had been spending only approximately 25 percent of his time performing clutch production. So, as with Buer, most of his time had been occupied with other types of work. Given that fact, it is logical to question why Respondent simply had not continued employing him to perform that other work, which was occupying 75 percent of his work time, and have him, like Buer, fill-in on whatever clutch production needed to be performed after November 21.

Asked why had had not continued employing Remmel to perform that other work, Webb answered, ''[B]ecause I've had experience in that area. We had him over the last five or six months in various other job areas, both in the maintenance and working on jigs, and it didn't work out. We weren't happy with the results.'' Asked for examples of those problems, Webb testified that ''Vanderpool is probably a little better. He was closer to it, but in general some of the things that [Remmel] did were temporary fixes and that never got the problem totally fixed.''

In fact, Vanderpool supplied a litany of complaints about Remmel: ''[S]ometimes I couldn't keep track of him very well. . . . sometimes when I thought he was supposed to be he wasn't always there''; he ''just never seemed to get quite finished'' with projects that he was assigned to work on, but was ''always kind of just tinkering'' and ''it seemed like we had a fair amount of breakdowns'' on projects supposedly taken care of by Remmel; he made derogatory comments to customers about Respondent's product. To be sure, Vanderpool was not always a credible witness, as illustrated, for example, by his testimony concerning severing Respondent's relationship with Sondrol. Still, there were aspects of his complaints about Remmel's nonclutch work which even Remmel corroborated.

For example, Vanderpool testified that, during early November, a customer had reported having been told by Remmel that there was something wrong with Respondent's shock. In one demonstration of why I do not credit Remmel in some situations, during cross-examination he fenced with counsel when asked about that customer:

> Q. Isn't it a fact that you told potential customers that there was a defect in the shocks of one of the company's products?
>
> A. Not that I recall.
>
> Q. You don't recall that?
>
> A. No.
>
> Q. Okay.
>
> A. The shocks would be on the suspension, not on the clutch.
>
> Q. Yes, but you got into a conversation with a customer where you raised that issue, that's correct isn't it?
>
> A. I didn't raise that issue. If somebody called in about the suspensions, it was either they were wanting to buy one and wanting to understand it better, or had a problem with the one that they had and wanted it corrected.
>
> Q. So that was your conversation?
>
> A. I had a lot of conversations about the suspensions and if you want to specify what conversation and detail it for me, I could probably give you more accurate information.

It appeared obvious that Remmel understood to what counsel was referring. In the end, he never did deny having made the statements about the shocks which the customer had reported to Vanderpool.

Relatedly, Vanderpool testified that when he questioned Remmel about the above-described customer's report, Remmel had retorted, ''[W]ell then don't give me any of those calls.'' In fact, conceded Remmel, at some point during November, ''calls on suspension were not directed to me any more [sic].''

In the end, Remmel never did deny convincingly any of Vanderpool's assertions, particularly the assertions about his tendency to wander around Respondent's place of business and to fail to complete projects assigned to him. It should not pass unnoticed that no employee discipline reports had been issued to Remmel for that type of conduct. But, that is not a persuasive consideration, since there is no evidence that

Respondent had so freely issued disciplinary reports before advent of the Union's campaign, as it did after it learned of that campaign.

Significantly, there is no evidence that Respondent ever hired anyone to perform either clutch production or the other tasks which Remmel had been performing prior to November 21. In consequence, as Webb testified that he had been trying to accomplish, the termination did result in a savings for Respondent—it had one less employee and, thus, eliminated the wages that it otherwise would have paid Remmel after November 21.

The totality of the foregoing circumstances convinces me that Respondent had notified Remmel, a year before his termination and almost 10 months before it learned of Remmel's role in the Union's organizing campaign, that he would be terminated if clutch sales did not meet the minimum goal established for 1994–1995. They did not attain that goal. That was not Remmel's fault, but absence of fault is not a necessary element in employer-decisions as to whether or not to continues particular operations. While circumstances during 1995 had led Respondent to assign other duties to Remmel—ones which came to occupy a significant majority of his work time—there is no evidence that Respondent ever had considered these assignments as anything other than fill-in work, because clutch production had not been absorbing all of his worktime. There is no evidence that Respondent ever had considered creating a position to perform that other work which Remmel had been assigned. Moreover, I credit the testimony that his performance had been less than satisfactory when performing that nonclutch work. Therefore, I conclude that a preponderance of the evidence fails to overcome the credible evidence that Respondent would have discharged Remmel on November 21 even had the Union not appeared on the scene and notified Respondent that Remmel was a member of its organizing committee.

### H. *Sending Bertram Home for 1 Day*

As set forth in section I,H, supra, Bertram's induction machine's water pump broke down on November 21. Operation of it could not resume until repairs were made. Respondent had a practice of assigning employees in similar situations to other duties. But, Bertram did not want to work in the fiberglass plant and there is no evidence of other alternative available work which he was qualified to perform. Indeed, while he protested to Cloakey and Vanderpool on November 21 that Respondent always had located work for employees, whenever their machinery malfunctioned, there is no evidence that Bertram had identified any work to which one or the other of those two supervisors could have assigned him. And the record will not support a conclusion that, absent needed work which an employee could perform while his/her machine was being repaired, Respondent historically had created some sort of ''busy-work'' for that employee.

To be sure, as concluded in preceding subsections, Respondent had harbored animus toward the Union and its employee supporters. Further, it had engaged in conduct which rose to the level of unfair labor practices, as a means of retaliating against those employee supporters and of discouraging employee support for the Union. Still, there is no evidence of available alternative work on November 21 which Bertram could, and had been willing, to perform. As pointed out in subsection F, above, it is the General Counsel who bears the burden of establishing every element of a violation. *Western Tug & Barge Corp*., supra. Absent credible evidence of such work, there is no basis for concluding that Bertram would not have sent home on November 21 in the absence of his union sympathies and activities. Therefore, I shall recommend that this allegation be dismissed.

### I. *Suspensions of Bertram and Whitcomb and Discharge of Bertram*

These allegations are rooted in the events arising from OSHA's December 14 test at Respondent's place of business, as described in section I,Q, supra. They provide an illustration of one particular balance which must be struck under the Act. Employers are prohibited from discrimination against employees because of hostility toward those employees' union or statutorily protected concerted activities. At the opposite pole, however, employees who engage in misconduct are not protected from discipline, including discharge, merely because of their union or protected concerted activities, even though their employers harbor animus toward such activities and welcome an opportunity to eliminate employees who engage in such activities. As the Board stated in *Klate Holt Co*., 161 NLRB 1606, 1612 (1966):

> If an employee provides an employer with a sufficient cause for his dismissal by engaging in conduct for which he would have been terminated in any event, and the employer discharges him for that reason, the circumstance that the employer welcomed the opportunity to discharge does not make it discriminatory and therefore unlawful. [Footnote omitted.]

As concluded in preceding subsections, Respondent had been hostile toward the Union and toward its employee supporters. It engaged in unfair labor practices against them, as a means of retaliation and as a means of discouraging employee support for the Union. Moreover, Bertram, as seemingly the Union's leading proponent, had been the specific target of several of those unfair labor practices.

On the other side, occupational health and safety legislation is intended to ensure ''minimum safe and healthful employment conditions for the protection and well-being of employees'' and, in consequence, is ''designed for the benefit of all employees,'' as well as for the benefit of the general public. *Alleluia Cushion Co*., 221 NLRB 999, 1000 (1975). An employee who acts to interfere with implementation of such legislation, no less than an employer who does so, interferes not only with proper safety and health protection for employees, in general, but also undermines ''the overall public interest'' underlying that legislation. Id. For, not only does such an employee's employer suffer possible penalty for a nonexistent unsafe or unhealthy condition, but public support for such legislation is undermined, if it ultimately is shown that penalties were not properly imposed. Furthermore, in such situations, the public agency implementing such legislation is put to needless and expensive enforcement actions to correct, what turns out to be, an unsafe or unhealthy condition which does not actually exist.

Such agencies, no less than the Board, have only limited resources. If directed to nonexistent conditions, those resources are diverted from other, actually unsafe and

unhealthy situations, thereby depriving employees in those latter situations of the benefits of statutes enacted for their protection. In sum, an employee's effort to skew an OSHA test, so that his/her employer appears to be maintaining unsafe and unhealthy conditions in the workplace, undermines both the interests in proper protection under such legislation of employees, in general, and, as well, undermines the public interest in proper implementation of such legislation. Such an employee engages in misconduct which is outside of the Act's protection. Beyond that, the Act does not protect employees who engage in unsafe practices in their workplaces.

As disclosed by the employee disciplinary report, described in section I,Q, supra, Bertram had been terminated, at root, for two reasons. First, for the unsafe practice of carrying hot bars away from the induction machine-cooling table area to the nearby paste table, thereby risking injury to himself and his coworkers, should the bar slip from its carrying device or touch another employee while being carted around. Second, by adding flux to those hot bars while away from the induction machine-cooling table, smoke and fumes were emitted which could not be vented through the system in place above that induction machine-cooling table area. In turn, the unvented smoke and fumes, being measured on the monitor which Bertram had been wearing, skewed the OSHA test of that venting system to Respondent's disadvantage—made it seem that more smoke and fumes were not being vented by the system than ordinarily was the fact.

Bertram admitted that, while wearing the OSHA monitor on December 14, he had carried hot bars from his assigned work area to the nearby paste table where he had applied additional paste or flux to the heated bars. In having done so, Bertram did not dispute that smoke and fumes had been caused which, while away from the induction machine-cooling table area, could not have been vented through the hood over the induction machine. However, Bertram asserted that this had been his ordinary practice and, further, that it had been a practice followed by others, as well. Yet, these assertions were not advanced convincingly. Moreover, there was no credible corroborative evidence in support of those assertions.

The only witness who supported those assertions by Bertram was Daniel L. Whitcomb. That was not necessarily surprising, given the fact that Whitcomb was a union supporter and, more importantly, had been implicated in Bertram's December 14 action, as a person who had been encouraging Bertram to apply more paste to the heated bars while away from the venting hood.

Bertram and Whitcomb each identified Brenda Lang and Melanie Smith as employees who also had put paste on hot bars. In addition, Bertram identified Debbie Christianson, Samantha Marie Huberty, and Shari Keller as employees who had done so. Of those five employees, only Huberty appeared as a witness, though there was neither evidence nor representation that Lang, Smith, Christianson, and Keller were unavailable to appear as corroborative witnesses for Bertram and Whitcomb. Huberty had trained Bertram on the induction welding machine, before leaving employment with Respondent. She denied flatly ever having applied flux or paste on a hot carbide bar, pointing out that doing so ''would make it really smoke a lot.''

The two employees who reported having seen Bertram putting paste on hot carbide bars on December 14—Paul Chupp and Jane Torborg—each denied ever having seen Bertram or anyone else putting paste on hot bars prior to having seen Bertram do so on December 14. Torborg's testimony was particularly significant, for she had been the employee who prepared the bars, applying paste or flux to them, for Bertram to place in the induction machine. She conceded that, on December 14, Bertram may have complained that the carbides were not being put on straight or were not being pushed down all the way, just as he had voiced such complaints on many occasions. However, she testified that whenever in the past Bertram had added paste to a hot bar, he ''never brought the bar over to put paste in the bar itself,'' but instead, ''he'd always use a needle nose and pick up a carbide and put it on the carbide and put it in the hot bar *while it was in the induction machine*.'' (Emphasis added.) Of course, in following that procedure, most resultant smoke and fumes would be vented through the hood, not into the workplace at large as occurred during the morning of December 14.

A number of arguments have been advanced in support of the allegation that Bertram's discharge had been unlawfully motivated. Many are based on the somewhat ham-handed procedure followed by Respondent when investigating the events of December 14. Nevertheless, certain factors are undisputed and, of themselves, serve to refute any adverse inference sought as a result of Respondent's investigative technique. First, so far as the evidence shows, this had been the first occasion on which Respondent had been confronted with a report of conduct so serious as an employee engaging in dangerous conduct to influence an OSHA test's results so that they would be adverse to Respondent. In consequence, it is not necessarily surprising that Respondent's officials may have been somewhat clumsy in addressing investigation of reports about the December 14 situation.

Second, by December 15, Respondent already was facing allegations arising from the unfair labor practice charges filed in Cases 18–CA–13787 and 18–CA–13848, as set forth in the statement of the case, supra. Inasmuch as Bertram had been identified by Behr as a proponent of the Union, Respondent had to be aware that his discharge likely would lead to filing of another charge, as indeed it did. Consequently, it is not surprising that Respondent would want to investigate Chupp and Torborg's report before taking any final personnel action against Bertram. Unlawful motivation cannot be inferred from the mere fact of awareness that a charge might be filed and from the further fact that an employer has taken steps to ensure the propriety of whatever personnel action it may take, as a defense to such a charge. See, e.g., *Mac Tools, Inc*., 271 NLRB 254, 255 (1984).

Third, this was not a situation—such as violation of the policy against unauthorized use of company telephones for personal calls, discussed in subsection E, above—where Respondent's officials had initiated investigation of misconduct and seemed to be trying to ferret out an infraction so that union supporters could be disciplined. It had been two employees, Chupp and Torborg—neither of whom has been shown to be opposed to the Union and its supporters—who had reported what they had seen during the morning of December 14. And one of them also volunteered that Bertram had appeared to be trying to influence the OSHA test results by his conduct that morning. In consequence, enough information had been reported to Respondent, by employees, that

it would be natural for an employer to investigate so that it could ascertain whether there had been an unsafe practice and whether there had been an effort to skew the OSHA test.

Fourth, whatever may be said about the content of the written statements collected from Chupp, Torborg, and Daniel L. Whitcomb, and the circumstances under which they had been prepared on December 15 and 18, the fact remains that both Chupp and Torborg had reported orally to Webb and Cloakey, before writing out their statements, the essence of the events which led Respondent to conclude that discharge had been warranted. Thus, Chupp testified:

> I told [Webb] that I seen Bill coming—turning around with this hot bar, smoking hot bar to the induction machine and I guess at the time I was wondering why he was doing that, but then later I found out why this thing that was hanging on his waist [the OSHA monitor], the reason that I felt that he was doing it because I never seen it before, was giving—creating extra smoke—
>
> . . . .
>
> Well, I—about the laughing back and forth [between Whitcomb and Bertram] and the hot smoking bar and—I told him exactly what I seen.

Similarly, Torborg testified that she had told Webb, ''[T]hat Bill had taken bars off of the burning induction machine and brought them over and pasted them and it was giving off extra smoke.'' She further testified that she had told Webb, ''I felt that he was doing that just to run the meter higher and that him and Dan made several contacts, eye contacts and motioned to each other about what they were doing. And that I felt that it was unfair.'' Asked, during cross-examination, if she had specified to Webb what she meant by Whitcomb and Bertram ''motioning to each other,'' Torborg replied, ''I told him that I felt that Dan was making a motion to make more smoke, him and Bill were both making—trying to make more smoke to make it—the meter to go higher,'' and that Whitcomb had been waving his hand ''in circles and also they were laughing when it did make more smoke, they were laughing at each other.''

Chupp and Torborg appeared to be testifying candidly. While it might be argued that the latter had something to gain by testifying favorably to Respondent, since she was on layoff and might be recalled by it, certainly that cannot be said of Chupp. By the time of the hearing he had voluntarily quit his employment with Respondent to become self-employed. There is no showing that his income remains, in whole or part, dependent on continued good relations with Respondent.

The oral reports of those two employees, made before their written statements had been requested and prepared, contained the essence of the reasons advanced by Respondent for having terminated Bertram: that he had been carrying hot bars to the pasting table, that while there he had applied paste to those hot bars, that doing so had caused smoke and fumes which were not vented through the hood in the induction machine-cooling table area, that those smoke and fumes adversely affected the OSHA test from Respondent's standpoint, and that his conduct endangered himself and others. In that regard, one aspect of Whitcomb's testimony should not escape notice.

He testified that he had told Webb, Vanderpool, and Cloakey on December 15 that, on the previous day, Bertram ''wasn't really doing anything out of the ordinary'' and that other employees had put paste on hot bars. Significantly, however, Whitcomb conceded that he also had told the three supervisors that he had noticed Bertram putting paste on hot bars on December 14 only while wearing the OSHA monitor. In addition, he admitted having told Webb and Vanderpool that if Bertram could have affected the OSHA test's results, he would have done so.

In sum, regardless of these employees' written statements, and the circumstances under which they were prepared, Chupp, Torborg, and Daniel L. Whitcomb orally had provided Respondent with information that on December 14, only while wearing the OSHA monitor, Bertram had left the vented induction machine-cooling table area carrying hot wear bars, had taken those bars to a nearby unvented location where he added paste which caused smoke and fumes to be emitted, and, in doing so, appeared to be deliberately trying to skew the OSHA test to Respondent's disadvantage. Respondent's conclusion that the latter had been the fact is a reasonable inference from those oral statements. Respondent's officials were not precluded by the Act from disbelieving, as do I, Bertram's explanations advanced to defend his actions.

Even if Bertram always had followed that procedure, there is no credible evidence that any of Respondent's supervisors and its co-owner had known as much during mid-December. That practice, of itself, was an unsafe one. Beyond that, it reasonably appeared to Respondent's officials—and to me, as well—that rather than having followed any asserted practice on December 14, Bertram had been attempting to deliberately disadvantage Respondent by adding paste to hot carbide bars in an unvented area and only while wearing the OSHA monitor.

To be sure, Respondent had no specific work rule prohibiting hot carbide bars from being carried from the induction machine-cooling table. Yet, Respondent argues that such conduct is contrary to ''common sense,'' given the danger of injury if one of them touches an employee, and is so aberrant that no reasonable employer would foresee a need to publish written proscription of doing so. That is a persuasive argument.

Every organization operates on the basis that personnel will exercise common sense when performing their jobs. Certainly, the Act does not oblige employees to formulate and publish rules prohibiting every conceivable unsafe practice which may be committed before disciplining an employee for engaging in obviously unsafe conduct. For example, no one could dispute that an employee could be disciplined for such egregious conduct as carrying a hot carbide bar while chasing after another employee through the building. The Act does not bar an employer from imposing discipline for such misconduct simply because there is no specific rule prohibiting it. So, too, Bertram carried hot carbide bars from his work area, on each occasion obviously risking that the bar might be mishandled and touch Bertram or someone else, causing severe burn. Moreover, it seems obvious that his reason for doing so had been to obtain paste that could be applied to the bars in an unvented area, thereby creating smoke and fumes which would increase the reading on the monitor he was wearing for OSHA. Surely, no specific prohibition is

necessary for an employee to naturally realize that such conduct was improper.

Respondent concedes that it had not been fined as a result of Bertram's conduct which heightened the OSHA monitor's reading concerning unvented smoke and fumes. But, the record reveals that, on discovering what Bertram had done, Respondent immediately contacted OSHA, explained the situation and another test was conducted. Had Respondent not done so, OSHA may well have fined Respondent, in the normal course of affairs, because of heightened readings from the monitor. In any event, the Act does not require employers to withhold discipline in such situations until those employers suffer a penalty and then only impose discipline.

It also is accurate that Respondent discharged only Bertram and did not discipline Daniel L. Whitcomb for the events of December 14. Yet, Whitcomb also had been an open supporter of the Union, though his name had not been mentioned in Behr's letters to Respondent. Moreover, at most, Whitcomb had encouraged Bertram's conduct, but had not actually engaged in unsafe conduct and conduct which skewed OSHA's test. Finally, Whitcomb denied that his conduct on December 14 had amounted to encouragement and, viewed from Respondent's perspective, the statements about Whitcomb's conduct had been ambiguous—did not show clearly that he actually had been encouraging Bertram, as opposed to talking and gesturing to Bertram for some other reason. In these circumstances, the fact that Respondent did not discipline Whitcomb for his conduct on December 14 does not evidence an unlawful motive for its discharge of Bertram, the employee who actually did engage in misconduct and attempt to skew the OSHA test.

In sum, Respondent harbored animus toward the Union and its employee supporters. Further, it engaged in unfair labor practices to retaliate against them and to discourage support for the Union. Several of those unfair labor practices were directed against William Bertram, the employee first identified to Respondent by the Union as the latter's supporter. Nevertheless, on December 14 Bertram engaged in unsafe conduct in the workplace and, also, conduct which certainly allowed Respondent to infer that he had been attempting to skew an OSHA test to Respondent's disadvantage. It had been for that conduct which Respondent contends that it discharged Bertram. The credible evidence supports that contention. Therefore, I conclude that Respondent has met its burden of going forward with evidence sufficient to show that, even absent the Union's campaign and Bertram's role in it, Respondent would have discharged Bertram for engaging in misconduct on December 14. I shall dismiss the allegation that Bertram had been unlawfully terminated.

So, too shall I dismiss the allegation that Respondent unlawfully suspended Daniel L. Whitcomb on December 15 and, inferentially, Bertram when he had been suspended on that same date. Although Chupp and Torborg were not also sent home that day, neither of them had been accused of engaging in misconduct. It would be absurd to require that employers also send home employees who report unsafe or improper conduct, in order to be allowed to lawfully suspend employees accused of engaging in such misconduct. Respondent's evidence shows that Whitcomb—and Bertram, as well—was sent home because Respondent did not want to allow him to roam its place of business, possibly influencing other workers who might be asked about what had occurred on December 14. That is a logical explanation and the testimony supporting it was advanced credibly. Therefore, I conclude that the credible evidence shows that the suspension had not been unlawfully motivated and would have taken place even had the Union not been on the scene.

## CONCLUSIONS OF LAW

Koronis Parts, Inc. has committed unfair labor practices affecting commerce by failing to allow Tamara Sondrol to continue working at its place of business so that it could hire her; by issuing employee disciplinary reports to William L. Bertram on September 20, 1995; to Robert Kessler on October 3, 1995; to William L. Bertram and Allan Remmel on October 16, 1995; and to Robert Kessler and William L. Bertram on November 7, 1995; by issuing a ''Warning to Bill Bertram'' on September 27, 1995; and by issuing an ''INTERNAL MEMO'' to Allan Remmel on October 16, 1995, in violation of Section 8(a)(3) and (1) of the Act; and, by threatening plant closure if its employees selected Teamsters Union Local No. 970, affiliated with International Brotherhood of Teamsters, a statutory labor organization, as their collective-bargaining agent, by creating the impression that employees' union activities were under surveillance, by coercively interrogating employees about their own and other employees' union sympathies and activities, by impliedly threatening that support for the above-named labor organization would adversely affect an employee's ability to receive bonuses, by promulgating and publishing a rule prohibiting employees from discussing their wages with one another, by directing an employee not to discuss her wage rate with other employees, by inviting an employee to quit if he was unhappy with his wages, by involving a supervisor in distribution of ''VOTE NO'' T-shirts, by insisting that an employee return one of those T-shirts if he would not wear it at work, by impliedly threatening adverse consequences if that employee did not do so, and by increasing amounts awarded to employees as gift certificates and prizes at a company-sponsored picnic to discourage support for the above-named labor organization, in violation of Section 8(a)(1) of the Act. However, Koronis Parts, Inc. has not violated the Act in any other manner alleged in the amended and consolidated complaint.

## REMEDY

Having concluded that Koronis Parts, Inc. has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and, further, that it be ordered to take certain affirmative action to effectuate the policies of the Act. With respect to the latter, it shall be ordered to remove from its ''COMPANY POLICY'' handbook, ''Amended November 14, 1995,'' the bordered-portion of the ''WAGES'' section, which states that wages ''are personal and confidential'' and which ''asks that wage discussions be limited between the employee and their supervisor, plant manager or Company owners only.'' It also shall be ordered to distribute to all employees copies of the ''COMPANY POLICY'' handbook with that portion deleted. *Indian Hills Care Center*, 321 NLRB 144 (1996), and cases cited therein.

It shall be further ordered to, within 14 days from the date of this Order, offer Tamara Sondrol full reinstatement to the job of robotic welder, and provide schooling for her to learn

how to perform that job, equivalent to that which she would have received during October 1995, as would have occurred but for the discrimination directed against her, dismissing, if necessary, anyone who may have been hired or assigned to perform that job after October 6, 1995. If that job no longer exists, Sondrol will be offered employment in a substantially equivalent position, without prejudice to her seniority or other rights and privileges which she would have enjoyed had she been allowed to continue working and been hired as robotic welder. Moreover, it shall make Tamara Sondrol whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, with backpay to be computed on a quarterly basis, making deductions for interim earnings, *F. W. Woolworth Co*., 90 NLRB 289 (1950), and with interest to be paid on amounts owing, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). It also shall, within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to allow Sondrol to continue working after October 6, 1995, and to hire her, and within 3 days thereafter shall notify Sondrol in writing that this has been done and that the refusal to allow her to continue work and to hire her will not be held against her in any way.

It shall be further ordered, within 14 days from the date of this Order, to remove from its files the employee disciplinary reports issued to William L. Bertram on September 20, October 16, and November 7, 1995; to Robert Kessler on October 3 and on November 7, 1995; and to Allan Remmel on October 16, 1995; the ''Warning to Bill Bertram issued to William L. Bertram on September 27, 1995; and the ''INTERNAL MEMO'' issued to Allan Remmel on October 16, 1995, as well as any other references in its files to those unlawfully issued documents. Within 3 day thereafter, it shall notify Bertram, Kessler, and Remmel, respectively, that this had been done and that those documents will not be used again each in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

## ORDER

The Respondent, Koronis Parts, Inc., Paynesville, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening plant closure if Teamsters Union Local No. 970, affiliated with International Brotherhood of Teamsters, or any other labor organization, is selected as the collective-bargaining agent of its employees; creating the impression of surveillance of employees' union activities; coercively interrogating employees concerning their own and other employees' union sympathies and activities; threatening that support for the above-named labor organization or any other labor organization, will adversely affect ability of employees to receive bonuses; publishing rules that prohibit employees from discussing wages among themselves; telling employees not to discuss their wage rates with other employees; inviting employees to look for another job and quit if they are unhappy with their wage rates; involving supervisors in the distribution of antiunion apparel, including ''VOTE NO'' T-shirts; directing employees to return antiunion apparel, such as ''VOTE NO'' T-shirts, if they are unwilling to wear that apparel while at work, and threatening adverse consequences if they are unwilling to return that apparel; and increasing the amounts of gift certificates and prizes awarded to employees as a result of drawings at company-sponsored picnics and other events, to discourage employees from supporting the above-named labor organization or any other labor organization.

(b) Maintaining in its ''COMPANY POLICY'' a rule which tells employees that wages ''are personal and confidential,'' and ''asks that wage discussions be limited between the employee and their supervisor, plant manager or Company owners only.''

(c) Refusing to allow Tamara Sondrol, or any other employee, to continue working at its Paynesville, Minnesota place of business; refusing to hire Sondrol, or any other employee; and otherwise discriminating against Sondrol, or any other employee, because of suspected or known sympathy and activity on behalf of the above-named labor organization, or any other labor organization.

(d) Issuing employee disciplinary reports, warnings, internal memos to, or otherwise discriminating against, any employee because of sympathy for, or activities on behalf of, the above-named labor organization, or any other labor organization.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remove from its ''COMPANY POLICY'' handbook, ''Amended November 14, 1995,'' the bordered-portion of the ''WAGES'' section, which states that wages are ''personal and confidential,'' and which ''asks that wage discussions be limited between the employee and their supervisor, plant manager or Company owners only,'' and distribute to all employees copies of the ''COMPANY POLICY'' with that portion deleted.

(b) Within 14 days from the date of this Order, offer Tamara Sondrol full reinstatement to the job of robotic welder, and provide schooling for her to learn how to perform that job, as would have occurred had she not unlawfully been denied employment after October 6, 1995, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges which she would have enjoyed had she been allowed to continue working had she been hired as a robotic welder.

(c) Make Tamara Sondrol whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to allow Tamara Sondrol to continue working at its Paynesville, Minnesota place of business, and to the unlawful refusal to hire her, and within 3 days thereafter notify Sondrol in writing that this has been done and that the refusal to continue allowing her to work and to hire her will not be used against her in any way.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days from the date of this Order, remove from its files the Employee Disciplinary Reports issued to William L. Bertram on September 20, on October 16, and on November 7, 1995; to Robert Kessler on October 3 and on November 7, 1995; and to Allan Remmel on October 16, 1995; the ''Warning to Bill Bertram.'' issued to William L. Bertram on September 27, 1995; and the ''INTERNAL MEMO'' issued to Allan Remmel on October 16, 1995, as well as any reference in its files to those unlawfully issued documents, and within 3 days thereafter notify Bertram, Kessler, and Remmel, respectively, that this has been done.

(g) Within 14 days after service by the Region, post at its Paynesville, Minnesota place of business copies of the attached notice marked ''Appendix.''[11] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by its duly authorized representative, shall be posted by Koronis Parts, Inc. and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by it to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Koronis Parts, Inc. has gone out of business or closed the Paynesville facility involved in these proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by it at any time since October 4, 1995. In addition, it shall mail, at its own expense, a copy of the notice to William L. Bertram, Robert Kessler, and Allan Remmel.

(h) Within 21 day after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

IT IS FURTHER ORDERED that the amended and consolidated complaint be, and it is, dismissed insofar as it alleges violations of the Act not found herein.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to close our Paynesville, Minnesota place of business if you select Teamsters Union Local No. 970, affiliated with International Brotherhood of Teamsters, or any other labor organization, as your collective-bargaining agent.

WE WILL NOT create the impression that we are engaging in surveillance of your union activities.

WE WILL NOT coercively interrogate you concerning your own and other employees' union sympathies and activities.

WE WILL NOT threaten that support for the above-named Union, or any other union, will adversely affect your ability to receive bonuses.

WE WILL NOT publish rules that prohibit you from discussing wages among yourselves.

WE WILL NOT tell you to not discuss your wage rates with other employees.

WE WILL NOT invite you to look for another job and quit because you are unhappy with your wage rates.

WE WILL NOT involve supervisors in the distribution of antiunion apparel, including ''VOTE NO'' T-shirts.

WE WILL NOT direct you to return antiunion apparel, such as ''VOTE NO'' T-shirts, if you are unwilling to wear that apparel while at work and WE WILL NOT threaten adverse consequences if you are unwilling to return that apparel.

WE WILL NOT increase amounts of gift certificates and prizes awarded to you as a result of drawings at events which we sponsor, such as picnics, to discourage you from supporting the above-named union, or any other union.

WE WILL NOT maintain in our ''COMPANY POLICY'' a rule which tells you that wages ''are personal and confidential,'' and which ''asks that wage discussions be limited between the employee and their supervisor, plant manager or Company owners only.''

WE WILL NOT refuse to allow Tamara Sondrol, or any other employee, to continue working at our Paynesville, Minnesota place of business; refuse to hire Sondrol or any other employee; or otherwise discriminate against Sondrol, or any other employee, because of suspected or known sympathy toward, or activity on behalf of, the above-named Union, or any other union.

WE WILL NOT issue employee disciplinary reports, warnings, internal memos to, or otherwise discriminate against, any employee because of their sympathy for, or activity on behalf of, the above-named Union, or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remove from our ''COMPANY POLICY,'' as ''Amended November 14, 1995,'' the bordered-portion of the ''WAGES'' section, which states that wages ''are personal and confidential'' and which ''asks that wage discussions be limited between the employee and their supervisor, plant manager or Company owners only,'' and WE WILL distribute to each of you a copy of the ''COMPANY POLICY'' with that portion deleted.

WE WILL, within 14 days from the date of this Order, offer Tamara Sondrol full reinstatement to the robotic welder's job, providing her with the schooling needed for her to learn how to perform that job, as would have occurred had she not been denied employment after October 6, 1995, or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges which she would have enjoyed had we not unlawfully deprived her of further employment on October 6, 1995.

WE WILL make whole Tamara Sondrol for any loss of earnings and other benefits resulting from our unlawful denial of employment to, and refusal to hire, her after October 6, 1995, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful refusal to allow Tamara Sondrol to continue working and to the unlawful refusal to hire her, and WE WILL, within 3 days thereafter, notify her in writing that his has been done and that those unlawful acts will not be used against her in any way.

WE WILL, within 14 days from the date of this Order, remove from our files the employee disciplinary reports issued to William L. Bertram on September 20, on October 16, and on November 7, 1995; to Robert Kessler on October 3 and on November 7, 1995; and to Allan Remmel on October 16, 1995; the ''Warning to Bill Bertram'' issued to William L. Bertram on September 27, 1995; and, the ''INTERNAL MEMO'' issued to Allan Remmel on October 16, 1995, as well as any reference in our files to those unlawfully issued documents, and WE WILL, within 3 days thereafter, notify Bertram, Kessler, and Remmel, respectively, that this has been done and that none of those documents will be used against them in any way.

KORONIS PARTS, INC.